In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 4

MARC D. LEH, individually, and THE PROGRESS COMPANY, a copartnership comprised of MARC D. LEH and DAVID BROWN, co-partners,
Petitioners,

vs.

GENERAL PETROLEUM CORPORATION, a corporation, STANDARD OIL COMPANY OF CALIFORNIA, a corporation, TEXACO INC., a corporation, RICHFIELD OIL CORPORATION, a corporation, UNION OIL COMPANY OF CALIFORNIA, a corporation, TIDEWATER OIL COMPANY, a corporation,
Respondents.

Brief for Respondents

PAUL E. BERMINGHAM,
150 East 42nd St., New York 17, N.Y.
HOWARD PAINTER,
811 West Seventh St., Los Angeles, Calif.
Attorneys for General Petroleum Corporation.

FRANCIS R. KIRKHAM,
WILLIAM E. MUSSMAN,
THOMAS E. HAVEN,
225 Bush St., San Francisco 4, Calif.
Attorneys for Standard Oil Company of California.

GEORGE W. JANSEN,
110 Laurel Street, San Diego, Calif.
Attorney for Texaco Inc.

JACK E. WOODS,
WILLIAM D. FOOTE,
555 South Flower St., Los Angeles, Calif.
CLARK HEGGENESS,
120 Linden Ave., Long Beach, Calif.
Attorneys for Richfield Oil Corporation.

MOSES LASKY,
RICHARD HAAS,
111 Sutter St., San Francisco 4, Calif.
Attorneys for Union Oil Company of California.

EDMUND D. BUCKLEY,
4201 Wilshire Blvd., Los Angeles, Calif.
WAYNE H. KNIGHT,
550 South Flower St., Los Angeles, Calif.
Attorneys for Tidewater Oil Company.

Attorneys for Respondents

BORG PRINTING COMPANY OF CALIFORNIA, 346 FIRST STREET, SAN FRANCISCO 94105

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ARGUMENT

The Government Case.

In 1950 the United States filed a civil proceeding against the Conservation Committee of California Oil Producers and seven major oil companies operating on the West

Coast.[1] The complaint charged generally, in the language of the Sherman Act, that commencing in 1936 and continuing to 1950 the defendants combined and conspired to monopolize and restrain trade in the production, transportation, refining and marketing of crude oil and petroleum products in the five far western states and had monopolized such trade (par. 69, R.V. 1151, Resp.App. 58). The suit sought divestiture of the defendant oil companies' retail marketing activities (Prayer 17; R.V. 1157; Resp.App. 70).[2] Following the general allegations, paragraphs 70a and 70b of the Government complaint, in 22 separate numbered subparagraphs (subdivided into a total of 38 subparagraphs), specified with particularity the terms of the conspiracy and monopolization alleged (R.V. 1151-1154; Resp. App. 58-64). The only terms of this conspiracy which pertain to marketing of gasoline and other products are in subparagraphs (5), (6), (7) and (8) of paragraph 70a (R.V. 1152; Resp.App. 60-61).[3] These subparagraphs of para-

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1. *United States v. Standard Oil Company of California, et al.*, Civil Action No. 11584-C, United States District Court for the Southern District of California.

In the appendix to this brief we print the amended complaint in the Government case (R.V. 1136; Resp.App. 29), and petitioners' complaint (R.II, 2, Resp.App. 1), amended complaint (R.II, 12; Resp.App. 11), a part of petitioners' Memorandum of Contentions of Fact and Law (R.III, 278; Resp.App. 24) and excerpts from the transcript of proceedings before the district court (R.XI, 326, Resp. App. 74). In this brief we shall refer to this appendix as "Resp. App."

2. After extensive pretrial hearings, the district court dismissed the case as to the Conservation Committee (1959 CCH Trade Cases, par. 69,240) and held that divestiture would not be decreed (1958 CCH Trade Cases, par. 69,212). Thereafter the remaining defendants, except Texaco, Inc., entered into a consent judgment (1959 CCH Trade Cases, par. 69,399). The case as to Texaco, Inc., was dismissed in 1961.

3. Paragraph 70b of the complaint alleges a conspiracy directed solely at independent producers and independent refiners (R.V. 1154; Resp.App. 61).

graph 70a alleged that the major oil companies agreed *"to eliminate competition among themselves"* by (subparagraph (5)) sharing wholesale and retail gasoline markets with each other by standardizing the grades of gasoline and other products, and by selling at identical prices, thus confining competition to advertising and services; (subparagraph (6)) fixing uniform prices for gasoline and other products by causing one company to post agreed prices and the others to follow such prices; (subparagraph (7)) fixing uniform retail prices of gasoline to be charged consumers by retailers; and (subparagraph (8)) maintaining wholesale and retail prices by refusing to sell to distributors or retailers who refused to follow prices fixed by the companies or who refused to agree to sell the products of a single major company on an exclusive dealing basis.

The Present Case.

In 1956 petitioners filed in the same court the complaint in the case at bar, and in January, 1957, filed an amended complaint (R. II, 2, 12; Resp.App. 1, 11).

The amended complaint charged generally, in the language of the Sherman Act, that respondents and Olympic conspired to monopolize and restrain trade and commerce in the distribution and sale of gasoline among the several states (par. 20, R. II, 18; Resp.App. 17). The conspiracy was alleged to have commenced in 1948—twelve years after the conspiracy alleged in the Government suit (par. 20, R. II, 18; Resp.App. 17)—and to have been participated in by six of the seven major oil companies who were defendants in the Government's suit and one other oil company—Olympic Refining Company. Neither Shell Oil Company nor the Conservation Committee of California Oil Producers, who were charged to have been parties to the conspiracy

alleged in the Government suit, were alleged to have been parties to this conspiracy.

In specifying the terms of the conspiracy the complaint alleged a conspiracy directed at independent jobbers in the Southern California area (par. 21, R. II, 18-21; Resp.App. 18-20). Specifically it alleged that the conspiracy consisted of an agreement to exclude independent jobbers of gasoline from the distribution thereof; to eliminate the customers of independent jobbers of gasoline; to exclude customers of independent jobbers of gasoline from competing with retail outlets operated by defendants; to obtain monopolistic control over gasoline sold through retail outlets by refusing to sell gasoline to jobbers and (inconsistently) fixing the prices at which gasoline would be sold to jobbers; to obtain noncompetitive profits by eliminating the sale of gasoline through independent jobbers and (inconsistently) fixing the prices at which gasoline would be sold to jobbers; and to exclude petitioners from the business of distributing gasoline in the Southern California area by eliminating their source of supply and (inconsistently) fixing the prices at which gasoline would be sold to petitioners (par. 21, R. II, 18-21; Resp.App. 18-20).

No one of the terms of conspiracy thus alleged was a "matter complained of in [the Government] proceeding," either "in whole or in part."[4] There was no "substantial identity of subject matter"[5]—indeed, no identity at all—between the two complaints.

During the course of pretrial proceedings petitioners filed a memorandum of their contentions and the facts and law

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4. Section 5(b) of the Clayton Act (15 U.S.C.A. sec. 16(b)) provides for the suspending of the running of the statute of limitations on a "private right of action * * * based in whole or in part on any matter complained of in [the Government] proceeding * * * during the pendency thereof * * *."

5. Quoted from the *Nisley* case. See page 9, infra.

upon which it would rely ("Plaintiff's Memorandum of Contentions of Fact and Law" (R. III, 278; Resp.App. 24)). In that memorandum petitioners further narrowed their charges (R. III, 179-280; Resp.App. 25-26):

> "In about the year 1948 'self service' gasoline stations were introduced on a large scale. The gasoline sold at such stations was rebrand gasoline obtained for the most part from jobbers such as plaintiff The Progress Company. In fact, plaintiff The Progress Company was then supplying one such self serve station, the Gilmore Station at 7718 Beverly Boulevard, Los Angeles, California.
>
> "It is contended that defendants herein combined and conspired to meet the threat of such self serve stations and their suppliers, that such combination and conspiracy was illegal under the Sherman and Clayton Acts, and that plaintiffs were damaged as a result of acts done by the defendants herein pursuant to such combination and conspiracy."

The conspiracy thus particularized bears no relation to the conspiracy alleged in the Government's complaint.

In their brief in this Court (pp. 19-21), in support of a contention that their "right of action is based at least in part upon matters complained of in the Government proceedings," petitioners list 18 "contentions" upon which they relied in the court below (Petitioners' Br. p. 21). These "contentions," however, form no part of the conspiracy alleged in the amended complaint or specified in the memorandum of contentions. They are not alleged to be, or contended to be, overt acts taken pursuant to the conspiracy, or to constitute any part of petitioners' "private right of action."[6] They are set out in the memorandum of contentions as items of proof—alleged "uniform business conduct"

6. Clayton Act, section 5(b).

which petitioners stated they would offer as part of their case *to prove* the existence of the combination and conspiracy alleged (R. III, 282; Resp.App. 28).

Petitioners' position in this regard was made clear in its statements to the trial court at the pretrial proceedings (R. XI, 421-422; Resp.App. 79-80):

> "THE COURT: Do you claim that damage to the plaintiff partnership proximately resulted from more than one conspiracy?
>
> "MR. HARRIS: No, sir, we do not.
>
> "THE COURT: What conspiracy are you relying upon?
>
> "MR. HARRIS: We rely upon the 1948 conspiracy, but—
>
> "THE COURT: All right. Then that is the only one relevant here to any claim of damage.
>
> "MR. HARRIS: To claim of damage, yes. But to proof of the conspiracy, no. And that is where I say there is going to be—
>
> "THE COURT: You mean you may offer evidence of other conspiracies to prove the conspiracy relied upon?
>
> "MR. HARRIS: As part of the proof of the 1948 conspiracy, it is our position that we are entitled to offer industry history and background, as well as direct relevance to the issue of the 1948 conspiracy, the fact that at the same time and at times prior the defendants were in conspiracies on these other things, such as crude supply, such as independent refiners—
>
> "THE COURT: I don't suppose there would be any question but what you can offer evidence that shows that they've done similar acts before and have done similar acts since, as far as that is concerned, under the circumstances."

In addition to the foregoing, petitioners, during the further course of pretrial proceedings, stated exactly what they relied upon as their "private right of action." During

those proceedings it appeared that petitioners had had an arrangement with Olympic Refining Company under which they were to be supplied with gasoline as long as Olympic was in turn supplied by respondent General Petroleum Corporation; that respondent Standard Oil Company of California replaced General Petroleum Corporation, as Olympic's supplier in February, 1954, thus terminating petitioners' supply arrangement (R. XI, 412-415; Resp.App. 75-77). In defining their "private right of action" petitioners' counsel stated:

> "• • • If there was a bona fide termination of the supply in 1954 from General to Olympic, we would not be here in court. Because it is our position that if there was no conspiracy, and if this contract in 1954 came to an end of its own volition or, as the defendants here contend, that Olympic simply didn't show up any more • • •[i]f that's what happened, then we'll state right here and now that we don't have a case.
>
> • • • • • • •
>
> "THE COURT: How could there be any damage if General had the right, through whim and caprice, to terminate the supply at any time?
>
> "MR. HARRIS: They had that right, absolutely. If General, acting unilaterally, would have terminated it, we, again, would not be in court. We contend that General, acting unilaterally, did not terminate it; that the defendants combined and conspired to effect that termination.
>
> • • • • • • •
>
> "• • • that [supply of gasoline] was cut off at a time in February of 1954 that we have talked about; and upon being cut off in February, our cause of action at that time arose" (R. XI, 413-415, 429; Resp.App. 75-77, 85).

Thus, the conspiracy alleged by petitioners in their amended complaint, further specified in their Memorandum of Contentions and finally particularized in pretrial pro-

ceedings was a conspiracy between different parties, commenced and related to acts occurring some 12 years after the formation of the conspiracy complained of by the Government, with entirely different terms, different objects and different means to effectuate them.

In this situation, both the district court and the court of appeals held that section 5(b) of the Clayton Act was not applicable. This decision, we submit, fully complies with the tests urged by petitioners in their brief and is clearly correct.

The Alleged Conflict of Decisions.

In their brief (page 4) petitioners contend that the court below, in deciding this case, "relied upon and applied the strict construction of Section 5(b) laid down by [the court's prior decision in] *Steiner v. 20th Century Fox Film Corp.* 232 F.2d 190"; that *Steiner* is erroneous and in conflict with *Union Carbide and Carbon Corporation v. Nisley* (1962) 300 F.2d 561, decided by the Tenth Circuit, and *Grengs v. Twentieth Century Fox Film Corporation* (1956) 232 F.2d 325, decided by the Seventh Circuit. In their petition for a writ of certiorari (page 17) petitioners, as ground for the writ, contended that "The Decisions of the Court Below in This Case and in Steiner * * * Are in Conflict With [the above] Decisions of the Seventh and Tenth Circuits."

In 1956, the Court of Appeals for the Ninth Circuit decided *Steiner*. The court construed section 5(b) of the Act as coextensive with section 5(a), stating (232 F.2d 196):

> "A greater similarity is needed than that the same conspiracies are alleged. The same means must be used to achieve the same objectives of the same conspiracies by the same defendants." * * *
>
> The tolling provision cannot be extended to matters which might have been but were not complained of by

the United States. It is restricted to matters actually complained of. The general rules of collateral estoppel apply. The reasoning of Emich Motors Corp. v. General Motors, 1951, 340 U.S. 558, 71 S.Ct. 408, 95 L.Ed. 534, and Partmar Corp. v. Paramount Pictures Theatres Corp., 1954, 347 U.S. 89, 74 S.Ct. 414, 98 L.Ed. 532, is pertinent, although these cases are concerned with the first paragraph of 15 U.S.C.A. § 16."

Thereafter, the Court of Appeals for the Tenth Circuit decided *Nisley*. Disagreeing with the statement in *Steiner*, the court in *Nisley* construed section 5(b) as not subject to the collateral estoppel rules applicable to section 5(a). It held (300 F.2d 569-570):

"The two paragraphs are indeed complementary and should be construed together. * * * But, we do not think they are necessarily co-extensive in their frame of reference. The purpose of the first paragraph of Section 5 was 'to minimize the burdens of litigation for injured private suitors by making available to them all matters previously established by the Government in antitrust actions';

* * * * * * *

"[W]e think Section 5(b), as amended, was intended to suspend the running of the statute on a Section 4 claim during the pendency of a government-instituted suit which complained of all, or a part of the means relied upon by the private plaintiff to effectuate the same general combination and conspiracy.

"These private suits alleged substantially the same conspiracy against the same defendants as in the government suit. They relied upon the same documentary and oral proof to establish the conspiracy, and they also relied "in part" on the same means for the effectuation of the same conspiracy. There was substantial identity of subject matter, and this was sufficient to suspend the running of the statute."

Following *Nisley*, in 1964, the Court of Appeals for the Ninth Circuit held in *Twentieth Century Fox Film Corporation v. Goldwyn*, 328 F.2d 190, that the statute of limitations was tolled where the private right of action was based in part on the same conspiracy and monopolization which had been complained of by the Government, even though the Government complaint had not claimed that the conspiracy was directed at independent producers of motion pictures, which was the basis of the private right of action. The court held that it was enough that both the Government and the private complaint relied on the vertical integration of Twentieth Century Fox and its subsidiaries as constituting the monopolization and combination complained of in both actions. The court, explaining its prior decision in *Steiner*, said (328 F.2d 219):

> "But, in any event, the tolling statute does not require, and the Steiner test does not provide, that all matters complained of in the private action must find a counterpart in the Government action. The private action is only required to be based in part on a matter complained of in the Government suit. The Goldwyn action is based at least in part on an alleged combination and monopoly between Twentieth Century Fox and National having the objective of monopolizing the business of exhibiting motion pictures, such objective being attained by the acquisition and operation of moving picture theatres."

Referring further to *Steiner*, the court said (328 F.2d 220, n.):

> "Nor, in view of the disposition which we have made of this matter do we find it necessary to pass upon plaintiff's contention that the Steiner case was wrongly decided. The cogent arguments made in support of that contention we leave for determination in some future litigation in which such a decision may be required."

Thereafter, the case at bar came before the Ninth Circuit. The court recognized that the *Steiner* case seems "to go further than other circuits" (330 F.2d, 301, n. 15). However, it cited and quoted the tests from both *Steiner* and *Nisley,* and held that neither test had been met here (page 301):

> "None of these tests are met * * * there were not only different overt acts charged, but different conspiracies, occurring at different times, between different parties."

For the purpose of deciding the instant case, it is immaterial whether *Steiner,* as limited by the Ninth Circuit itself in *Goldwyn,* was correctly decided.[7] We know that the reasoning in *Steiner* was in error in so far as it considered section 5(b) to be limited by the rules of collateral estoppel.

Minnesota Mining v. N. J. Wood Co. (1965) 381 U.S. 311.

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7. Actually, *Steiner* as limited by *Goldwyn,* appears to meet the test contended for by petitioners in their brief:

> "* * * the tolling statute does not require, and the Steiner test does not provide, that all matters complained of in the private action must find a counterpart in the Government action. The private action is only required to be based in part on a matter complained of in the Government suit (328 F.2d 219).

Goldwyn also removes doubts which at least one commentator expressed concerning *Steiner*:

> "It is clear from the above-quoted passage that the Ninth Circuit, and the courts entering the decisions cited therein, have construed the phrase 'any matter complained of' to mean overt acts of the defendants complained of by the United States in its antitrust proceedings, not just the conspiracy behind the overt acts. This seems a reasonable interpretation of the statute, with which other courts would be likely to agree. However, it is not altogether clear whether *Steiner* holds that a private claim for damages must have in common with a Government proceeding *identical* overt acts on the part of the defendants." (Wiprud, Antitrust Suits—Statute of Limitations, 57 Northwestern U.L. Rev. (1962) 29, 45.)

But in the instant case the Ninth Circuit held that the statute was not tolled under either the *Steiner* or *Nisley* test. And in *Goldwyn* the court suggested that it would reconsider *Steiner* when a case requiring such a determination comes before it.

In these circumstances, and since it clearly appears that the court below did not base its decision upon *Steiner*, but specifically and correctly held that the instant case does not meet the tests of either *Steiner* or *Nisley*, and since petitioners' representation in their petition for a writ of certiorari that the decision in the instant case conflicts with *Nisley* and *Grengs* is mistaken,[8] we submit that this case does not present an appropriate occasion for considering the decision in *Steiner* and that the writ of certiorari should be dismissed as improvidently granted.

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8. In *Grengs v. Twentieth Century Fox Film Corporation* (7 Cir. 1956) 232 F.2d 325, the only issue involving section 5(b) was how long the Government case, conceded to be identical to the private case, had been pending. It is not in conflict with *Steiner*.

CONCLUSION

For the foregoing reasons we submit that the writ of certiorari herein should be dismissed as improvidently granted or, in the alternative, that the judgment of the Court of Appeals for the Ninth Circuit should be affirmed.

Dated: September 24, 1965.

Respectfully submitted,

PAUL E. BERMINGHAM,
HOWARD PAINTER,
Attorneys for General Petroleum Corporation.

FRANCIS R. KIRKHAM,
WILLIAM E. MUSSMAN,
THOMAS E. HAVEN,
Attorneys for Standard Oil Company of California.

GEORGE W. JANSEN,
Attorney for Texaco Inc.

JACK E. WOODS,
WILLIAM D. FOOTE,
CLARK HEGGENESS,
Attorneys for Richfield Oil Corporation.

MOSES LASKY,
RICHARD HAAS,
Attorneys for Union Oil Company of California.

EDMUND D. BUCKLEY,
WAYNE H. KNIGHT,
Attorneys for Tidewater Oil Company.

Attorneys for Respondents

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Petitioners,

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GENERAL PETROLEUM CORPORATION, a corporation, STANDARD OIL COMPANY OF CALIFORNIA, a corporation, TEXACO INC., a corporation, RICHFIELD OIL CORPORATION, a corporation, UNION OIL COMPANY OF CALIFORNIA, a corporation, TIDEWATER OIL COMPANY, a corporation,
Respondents.

Appendix to Brief for Respondents

SORG PRINTING COMPANY OF CALIFORNIA, 346 FIRST STREET, SAN FRANCISCO 94105

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Appendix to Brief for Respondents

In the District Court of the United States, Southern District of California, Central Division

Civil Action File No. 20531

Marc D. Leh, individually and The Progress Company, a co-partnership comprised of Marc D. Leh and David Brown, co-partners,

Plaintiffs,

vs.

General Petroleum Corporation, a corporation, Standard Oil Company of California, a corporation, The Texas Co., a corporation, Richfield Oil Corporation, a corporation, Union Oil Company of California, a corporation, Tidewater Oil Company, a corporation, Olympic Refining Company, a corporation, and First Doe, Second Doe, Third Doe, Fourth Doe, Fifth Doe, Sixth Doe, Seventh Doe, Eighth Doe, Ninth Doe, and Tenth Doe,

Defendants.

COMPLAINT UNDER THE SHERMAN ANTI-TRUST ACT

The above named plaintiffs complain of the above named defendants and each of them, and allege as follows:

I

JURISDICTION

(1) The causes of action in this complaint arise under the laws for the protection of trade and commerce against restraints and monopolies, and more particularly under the provisions of law contained in Title 15 of the United States Code, including Sections 1, 2 and 7 of the Act of Congress known as the Sherman Act, and Sections 4, 5 and 12 of the Act of Congress known as the Clayton Act (15 U.S.C.A. Sections 1, 2, 15, 16, 22, 26; 26 Stat. 209; 26 Stat. 210; 38 Stat. 731; 38 Stat. 736; 38 Stat. 737).

(2) The purpose of this action is to recover threefold the damages sustained by plaintiffs, plus reasonable attorney's fees and costs of suit caused by the defendants' illegal, monopolistic practices and restraints of trade and commerce, particularly as affecting plaintiffs, all as more fully set forth herein, and for such other and further relief to which plaintiffs may be entitled.

II

PLAINTIFFS

(3) The plaintiffs, Marc D. Leh, individually, and The Progress Company, a co-partnership comprised of Marc D. Leh and David Brown, are residents of the County of Los Angeles, State of California, and since on or about January 28, 1948, until on or about January 8, 1954, were engaged in the business of supplying refined gasoline, as jobbers, to retail gasoline service stations of the so called "Serve-Yourself" type, which service stations were independent of and in competition with the retail gasoline service stations or outlets of the defendants, and said plaintiffs did maintain a principal office for the conduct of said business in the County of Los Angeles, State of California.

III

DEFENDANTS

(4) Defendant, Standard Oil Company of California, is now and at all times herein mentioned was a corporation, duly organized and existing under and by virtue of the laws of the State of Delaware, authorized to do and doing business in the State of California and transacting business in this judicial district.

(5) Defendant, The Texas Co., is now and at all times herein mentioned was a corporation, duly organized and existing under and by virtue of the laws of the State of Delaware, authorized to do and doing business in the State of California and transacting business in this judicial district.

(6) Defendant, Richfield Oil Corporation, is now and at all times herein mentioned was a corporation, duly organized and existing under and by virtue of the laws of the State of Delaware, authorized to do and doing business in the State of California and transacting business in this judicial district.

(7) Defendant, General Petroleum Corporation, is now and at all times herein mentioned was a corporation, duly organized and existing under and by virtue of the laws of the State of Delaware, authorized to do and doing business in the State of California and transacting business in this judicial district.

(8) Defendant, Tidewater Oil Company, is now and at all times herein mentioned was a corporation, duly organized and existing under and by virtue of the laws of the State of Delaware, authorized to do and doing business in the State of California and transacting business in this judicial district.

(9) Defendant, Union Oil Company of California, is now and at all times herein mentioned was a corporation, duly

organized and existing under and by virtue of the laws of the State of California, authorized to do and doing business in the State of California and transacting business in this judicial district.

(10) Defendant, Olympic Refining Company, is now and at all times herein mentioned was a corporation, duly organized and existing under and by virtue of the laws of the State of California, authorized to do and doing business in the State of California and transacting business in this judicial district.

(11) Plaintiffs are unaware of the true names and capacities of the defendants First Doe, Second Doe, Third Doe, Fourth Doe, Fifth Doe, Sixth Doe, Seventh Doe, Eighth Doe, Ninth Doe and Tenth Doe, and therefore sue said defendants by such fictitious names and will pray that their names and capacities, when ascertained, may be incorporated herein by appropriate amendments to this complaint.

(12) Defendants during all the times herein mentioned have been and now are engaged in the producing, refining and marketing of gasoline and other hydro-carbon substances in interstate commerce and each of said defendants conducts a portion of its said business in the County of Los Angeles, State of California, and regularly maintains an office and principal place of business in said County and State.

IV

INTERSTATE COMMERCE

(13) Plaintiffs were supplied with refined gasoline by defendants General Petroleum Corporation and Olympic Refining Company. Plaintiffs are informed and believe and upon such information and belief allege that said gasoline, or a substantial portion thereof, was the subject of and was

transported in interstate commerce by defendants General Petroleum Corporation and Olympic Refining Company, said gasoline or a substantial portion thereof being produced or refined outside of the State of California. Said refined gasoline was distributed by plaintiffs, as jobbers, in the State of California and in the State of Arizona and in interstate commerce.

V

VIOLATIONS OF LAW

(14) Beginning at an exact date unknown to plaintiffs, but believed to be in the year 1952, and continuously thereafter up to and including the date of the filing of the complaint herein, the defendants' (well knowing all of the facts herein alleged) have conspired to restrain and have restrained trade and commerce in the interstate distribution and sale of refined gasoline by agreeing, combining and conspiring with each other and with other major producers, refiners and distributors of gasoline in restraint of such trade and commerce contrary to Section 1 of the Act of Congress known as the Sherman Act (26 Stat. 209; 50 Stat. 693; 15 U.S.C.A. Section 1) and have thereby substantially lessened, limited and destroyed competition in said trade and commerce and have attempted to force out of the market jobbers of refined gasoline such as the plaintiffs herein and have prevented them from receiving a supply of gasoline with which to compete in said trade and commerce.

(15) Commencing on an exact date unknown to plaintiffs, but believed to be in or about the year 1952, and continuously thereafter, up to and including the date of the filing of the complaint herein, the defendants, well knowing all of the facts herein alleged, have attempted to monopolize and have monopolized, the trade and commerce and inter-

state distribution and sale of refined gasoline contrary to Section 2 of the Act of Congress commonly known as the Sherman Act (26 Stat. 209; 50 Stat. 693; 15 U.S.C.A. Section 2). Said combinations, agreements, conspiracies, monopolizations and attempts to monopolize have, during all of said period of time tended to restrain and monopolize and have in fact, restrained and monopolized trade and commerce in refined gasoline in interstate commerce.

VI

OBJECTS AND PURPOSES OF ILLEGAL RESTRAINTS AND MONOPOLIES.

(16) Among the objects and purposes of the illegal restraints and monopolies charged herein were and are the following:

(a) To force out of the market and out of business, jobbers of refined gasoline and to eliminate all or substantially all competition by such jobbers of refined gasoline.

(b) To eliminate the customers of such jobbers of refined gasoline and the competition of such customers with the stations owned and operated by the defendants, many of which customers were in the so called "Serve-Yourself" gasoline retail business in the County of Los Angeles, State of California and elsewhere in the United States.

(c) To exclude the customers of such jobbers from competing with the retail outlets which were owned and operated by the defendants by shutting down and controlling the supply of gasoline to such jobbers.

(d) To obtain practical control and monopoly over the purchase, sale and supply of gasoline in the County of Los Angeles, in the State of California, and elsewhere in the United States.

(e) To obtain prohibitive and non-competitive profits in the retail sale of gasoline in the County of Los Angeles, State of California, and in other States in the United States.

(f) To deprive the public generally of a competitive market in oil and gasoline and of a consequent savings in price and cost to the public.

VI

ACTS DONE IN FURTHERANCE OF ILLEGAL RESTRAINTS AND CONSPIRACIES.

(17) In furtherance of said illegal restraints and monopolies and to accomplish the aforesaid objects and purposes of the same, all of the defendants and each of them, have during the times mentioned herein done and caused to be done each of the following acts, among others:

(a) Conspired and agreed among themselves and with each other to restrain interstate trade and commerce in the sale of refined gasoline in the County of Los Angeles and in the State of California, in the State of Arizona, and elsewhere in the United States, and to maintain and perpetuate a monopoly of said trade and commerce in said areas in favor of the defendants named herein.

(b) Conspired and agreed among themselves and with the defendants the General Petroleum Corporation and Olympic Refining Company, to shut off, stop and cease, without provocation, or right, the supply of refined gasoline of the plaintiffs, in order to exclude the plaintiffs from competing in the sale of such refined gasoline.

(c) Pursuant to the conspiracy and agreement alleged in said paragraph (b) above, the defendants the General Petroleum Corporation and Olympic Refining Company did so shut off, stop and cease, without provocation or right, the supply of refined gasoline of the plaintiffs, firstly, on or about September 30, 1952, and finally on January 8, 1954.

(d) Conspired and agreed among themselves to prevent the plaintiffs from obtaining any other source of gasoline, and thereby to prevent the customers of plaintiffs from obtaining gasoline with which to compete with the retail service stations and outlets of defendants.

(e) Pursuant to the conspiracy and agreement alleged in subparagraph (d) above, defendants and each of them, refused to sell and/or deliver gasoline to the plaintiffs at all times after January 8, 1954.

(f) Conspired and agreed among themselves to maintain fixed prices for the sale of refined gasoline in the County of Los Angeles, State of California, based upon the prices set by the defendants, Standard Oil Company of California, and, in furtherance of said conspiracy and agreement, to preclude and destroy any substantial competition including the competition of plaintiffs in the sale of refined gasoline in the County of Los Angeles, State of California.

(g) Pursuant to said conspiracy and agreement alleged in subparagraph (f) above, defendants monopolized the competitive sources of refined gasoline in said area and made it impossible for plaintiffs to obtain refined gasoline in said area.

(h) Pursuant to the conspiracy and agreement alleged in subparagraph (f) above, defendants, Olympic Refining Company, in order to hamper, harass and destroy plaintiffs, brought action number 627406 in the Superior Court of the State of California, in and for the County of Los Angeles, entitled Olympic Refining Company, Plaintiffs, versus A. G. Gilmore Company, a corporation and Marc D. Leh and David E. Brown, partners, doing business under the fictitious name of The Progress Company, a partnership, Defendants, alleging moneys due from plaintiffs to defendant in such suit.

VII

EFFECTS OF DEFENDANTS ILLEGAL ACTS UPON PLAINTIFFS BUSINESS.

(18) The unlawful restraints, monopolies, attempts to monopolize, contracts, understandings, combinations and conspiracies of the defendants herein described have been and now have, as intended by the defendants, the following injurious effects upon plaintiffs property and business:

(a) That by reason of the conspiracy and agreement among the defendants and each of them to monopolize the sale of refined gasoline and to force out of business jobbers of such refined gasoline and to force lose and prevent competition therein and by the participation of the defendants General Petroleum Corporation and Olympic Refining Company therein plaintiffs have been deprived of all available source of refined gasoline which would enable them to continue their business and as a result thereof were compelled and forced to cease their business with a consequent loss of actual and potential profits which but for said acts of defendants herein would have resulted in large, substantial and continuing profits to plaintiffs and which to the date of this complaint have caused plaintiffs to lose the profits from their business that they formerly enjoyed.

(b) That by reason of the acts of defendants hereinabove alleged and being deprived of their supply of refined gasoline plaintiffs did and do suffer a loss in their capital investment and their business and in their good will.

(c) That by reason of the acts of defendants as hereinabove alleged and being deprived of their supply of refined gasoline, plaintiffs became and are insolvent and unable to meet the demands of their creditors.

(d) That by reason of the acts of defendants hereinabove alleged and being deprived of their supply of refined gaso-

line plaintiffs were forced out of business but nevertheless had to meet the obligations under the terms of their lease of their principal place of business and the warehouse and to continue to pay substantial rent therefor.

(e) By reason of all the foregoing facts plaintiffs have been damaged in the sum of not less than $245,000.00 to the date of the filing of this complaint.

Wherefore, plaintiffs pray judgment of Court as follows:

(1) That the conspiracy, conspiracies, combinations, contracts and agreements hereinbefore described and the acts taken to effectuate their purpose be declared by this Court to be illegal and in violation of the Sherman Antitrust Act, Sections 1 and 2 (15 U.S.C.A. Secs. 1 and 2).

(2) For judgment against the defendants and each of them in favor of plaintiffs for damages.

(3) For judgment against the defendants and each of them, for costs of suit and reasonable attorneys' fees, pursuant to the laws of the United States as provided in such cases;

(4) For such other and further relief as to the Court shall seem just and equitable.

/s/ Richard G. Harris
Attorney for Plaintiffs

Plaintiffs hereby demand a jury trial of the issues involved in this action.

In the District Court of the United States Southern District of California, Central Division

Civil Action File No. 20531—WM

Marc D. Leh, individually and The Progress Company, a copartnership composed of Marc D. Leh and David Brown, co-partners,

Plaintiffs,

vs.

General Petroleum Corporation, a corporation, Standard Oil Company of California, a corporation, The Texas Co., a corporation, Richfield Oil Corporation, a corporation, Union Oil Company of California, a corporation, Tidewater Oil Company, a corporation, Olympic Refining Company, a corporation, and First Doe, Second Doe, Third Doe, Fourth Doe, Fifth Doe, Sixth Doe, Seventh Doe, Eighth Doe, Ninth Doe, and Tenth Doe,

Defendants.

AMENDED COMPLAINT UNDER THE SHERMAN ANTI-TRUST ACT

The above named plaintiffs complain of the above named defendants, and each of them, and allege as follows:

I.
JURISDICTION AND VENUE

1. This amended complaint is filed, and these proceedings are instituted under Section 7 of the Act of Congress of July 2, 1890 (26 Stat. 210, as amended; 15 U.S.C.A. Sec-

tion 15), entitled "An Act to Protect Trade and Commerce against Unlawful Restraints and Monopolies", commonly known as the Sherman Anti-Trust Act, and under Sections 4, 5 and 12 of the Act of Congress of October 15, 1914 (26 Stat. 209; 26 Stat. 210; 38 Stat. 731, as amended; 38 Stat. 736; and 38 Stat. 737), commonly known as the Clayton Act, in order to recover damages and injuries to the plaintiffs and their business and property by reason of defendants' violations of Sections 1 and 2 of the Sherman Anti-Trust Act.

2. Each of the corporate defendants herein named has an office, transacts business, and is found within the Central Division of the Southern District of California. The alleged violations of law hereinafter described have been carried out in part within the said Division and District, and the Interstate commerce in petroleum products herein involved, as hereinafter described, is carried on in part within the said Division and District.

II.

PLAINTIFFS

3. Plaintiff Marc D. Leh, and David Brown, are each residents of the County of Los Angeles, State of California, and commencing on or about January 28, 1948, were engaged in the business of supplying refined gasoline under the name and style of "The Progress Company"; that said company was a copartnership composed of Marc D. Leh and David Brown; that the distribution of gasoline by such copartnership consisted of the supplying of refined gasoline by The Progress Company as a jobber to retail gasoline service stations; that The Progress Company maintained its principal office for the conduct of said business in the County of Los Angeles, State of California.

III.

DEFENDANTS

4. Defendant, Standard Oil Company of California, is now and at all times herein mentioned was a corporation, duly organized and existing under and by virtue of the laws of the State of Delaware, authorized to do and doing business in the State of California, and transacting business in this judicial district.

5. Defendant, The Texas Co., is now and at all times herein mentioned was a corporation, duly organized and existing under and by virtue of the laws of the State of Delaware, authorized to do and doing business in the State of California, and transacting business in this judicial district.

6. Defendant, Richfield Oil Corporation, is now and at all times herein mentioned was a corporation, duly organized and existing under and by virtue of the laws of the State of Delaware, authorized to do and doing business in the State of California, and transacting business in this judicial district.

7. Defendant, General Petroleum Corporation, is now and at all times herein mentioned was a corporation, duly organized and existing under and by virtue of the laws of the State of Delaware, authorized to do and doing business in the State of California, and transacting business in this judicial district.

8. Defendant, Tidewater Oil Company, is now and at all times herein mentioned was a corporation, duly organized and existing under and by virtue of the laws of the State of Delaware, authorized to do and doing business in the State of California, and transacting business in this judicial district.

9. Defendant, Union Oil Company of California, is now and at all times herein mentioned was a corporation, duly organized and existing under and by virtue of the laws of the State of California, authorized to do and doing business in the State of California, and transacting business in this judicial district.

10. Defendant, Olympic Refining Company, is now and at all times herein mentioned was a corporation, duly organized and existing under and by virtue of the laws of the State of California, authorized to do and doing business in the State of California, and transacting business in this judicial district.

11. Plaintiffs are unaware of the true names and capacities of the defendants First Doe, Second Doe, Third Doe, Fourth Doe, Fifth Doe, Sixth Doe, Seventh Doe, Eighth Doe, Ninth Doe and Tenth Doe, and therefore sue said defendants by such fictitious names, and will pray that their names and capacities, when ascertained, may be incorporated herein by appropriate amendents to this complaint.

12. Wherever in this complaint it is alleged that a corporate defendant did any act or thing, such allegation shall be deemed to mean that the officers, directors, agents and employees of said corporate defendant did authorize, order, perform or ratify such act or thing on behalf of said corporate defendant, while actively engaged in the management, control and performance of its affairs.

IV.

NATURE OF TRADE AND COMMERCE

13. Each of the defendants, during all of the times herein mentioned, is and has been engaged in producing, refining and marketing gasoline and other hydro-carbon

substances in various states of the United States. Each of said defendant corporations enters into "Exchange Agreements", many of which call for exchange, sale or purchase of gasoline from or to states outside of the State of California; each of said corporate defendants carries on its business within the State of California, and sells gasoline within the State of California, and carries on its business selling gasoline in states other than and outside of the State of California. That the business of each of said corporate defendants is integrated, and plaintiffs are informed and believe and on the basis thereof allege that no separate records are kept by any of said corporate defendants for the State of California, nor is there a division of the corporate activities of any of said defendants which is confined to the State of California, but that their operations and sale of gasoline within said State are but segments of their operations as a whole.

14. That said corporate defendants, and each of them, enter into contracts, exchange agreements, and carry on correspondence and business activities with persons and companies located outside of the State of California, concerning and relating to the sale and distribution of gasoline within the State of California, and plaintiffs are informed and believe and on the basis thereof allege that a substantial portion of the gasoline sold and distributed within the State of California by said corporate defendants (and/or the crude petroleum from which said gasoline is refined) comes from states outside of the State of California.

15. That at all times herein mentioned, plaintiffs were and had been supplied with refined gasoline purchased from defendant, General Petroleum Corporation and defendant, Olympic Refining Company. Plaintiffs are informed and believe and on the basis thereof allege that

said gasoline or a portion thereof was transported in interstate commerce by defendant, General Petroleum Corporation, and by defendant, Olympic Refining Company; that said gasoline or a substantial portion thereof was produced or refined outside the State of California.

16. That the gasoline purchased by plaintiffs as jobbers in the State of California was sold and distributed by plaintiffs as jobbers in the State of California and in the State of Arizona.

V.

PUBLIC INTEREST INVOLVED

17. That the public interest has been and is adversely affected by the acts and things done by defendants, and each of them, as hereinafter described, in that under our present economy the public is dependent upon ready access to gasoline at free and competitive prices. Traditionally, the orderly marketing of gasoline from gasoline refineries to retail outlets has been handled by "gasoline jobbers". Such jobbers handle gasoline on a wholesale basis; many have maintained bulk plants and all have distributive facilities available, such as trucks and trailers.

Wholesale gasoline jobbers have usually been entirely independent from the gasoline refineries and also independent of any financial interest in retail outlets.

During more recent years, gasoline refineries have themselves undertaken the distribution of gasoline from the refineries to retail outlets. More recently, gasoline refineries have enlarged their financial interests in and have acquired a great number of retail gasoline outlets.

As a result of the aforesaid activities of gasoline refineries, including the corporate defendants herein, the number of independent gasoline jobbers is steadily de-

creasing and the ability of independent retail outlets to purchase gasoline on a free, open and competitive market is diminishing.

18. Defendants are the largest producers of refined gasoline sold to and distributed by independent gasoline jobbers in the Southern California area, and they are the source of all, or substantially all, of the refined gasoline sold to and distributed by independent gasoline jobbers in the Southern California area.

19. Through the practices of defendants and the unlawful interference of defendants, as set forth and as more particularly described hereinafter, plaintiffs were and have been hindered, prevented and impeded in the distribution of gasoline in the Southern California area and to markets located outside of the State of California.

VI.

OFFENSES CHARGED

20. Commencing in or about the year 1948, the exact date being to the plaintiffs unknown, and continuing thereafter until the present, the defendants, and each of them, were and have been engaged in an unlawful combination and conspiracy to unreasonably restrain trade and commerce in the interstate distribution and sale of refined gasoline among the several states of the United States, and unreasonably to restrain plaintiffs in their activities and ability to engage in the aforesaid trade and commerce, and said defendants have combined and conspired, as herein set forth, to monopolize, and have attempted to monopolize, and have succeeded in monopolizing such trade and commerce, all in violation of Sections 1 and 2 of the Act of Congress of July 2, 1890, commonly known as the Sherman Anti-Trust Act (26 Stat. 209; 15 U.S.C.A., Sections 1 and 2).

21. The aforesaid combination and conspiracy to restrain trade and commerce and the combination and conspiracy to monopolize such trade and commerce have consisted of a continuing agreement and concert of action among the defendants, the substantial terms, purposes and intent of which have been that defendants:

(a) Agreed to exclude independent jobbers of refined gasoline from the distribution of refined gasoline throughout the Southern California area by:

1. Forcing such independent jobbers out of the market;
2. Eliminating a source of supply of refined gasoline to such independent jobbers;
3. Eliminating all competition by or from such independent jobbers.

(b) Agreed to eliminate the customers of independent jobbers of refined gasoline by:

1. Refusing to sell gasoline to independent jobbers for sale to such customers of such independent jobbers;
2. Refusing to sell gasoline directly to such customers of such independent jobbers;
3. Fixing and controlling the price at which gasoline would be sold, if at all, to independent dealers and jobbers selling gasoline in the Southern California area.

(c) Agreed to exclude customers of independent jobbers from competing with retail outlets owned and operated by defendants by:

1. Shutting down and controlling the supply of gasoline to independent jobbers;

2. Refusing to sell gasoline directly to the customers of independent jobbers while furnishing gasoline to retail outlets controlled by defendants, which retail outlets were in direct competition with outlets supplied by independent jobbers;
3. Fixing and controlling the price at which gasoline would be sold, if at all, to independent dealers and jobbers selling gasoline in the Southern California area.

(d) Agreed to obtain monopolistic control over the supply, distribution and sale of gasoline sold through retail outlets in the Southern California area by:

1. Refusing to sell refined gasoline to independent jobbers;
2. Refusing to sell refined gasoline to the customers of independent jobbers;
3. Fixing and controlling the price at which gasoline would be sold, if at all, to independent dealers and jobbers selling gasoline in the Southern California area.

(e) Agreed to obtain prohibitive and non-competitive profits from the wholesale and retail sale of refined gasoline by defendants in the Southern California area by:

1. Eliminating the sale and distribution of gasoline through independent jobbers and the competition furnished thereby;
2. Controlling the outlets through which retail sales of gasoline are made;
3. Fixing and controlling the price at which gasoline would be sold, if at all, to independent dealers and jobbers selling gasoline in the Southern California area.

(f) Agreed to deprive the general public of the advantages of a competitive market for the retail purchase of refined gasoline by:

1. Denying the public the benefits of a free, unhampered and competitive distribution program;
2. Depriving the public from consequent price advantages which flow from free, unhampered competitive distribution;
3. Fixing and controlling the supply and price of gasoline flowing to and available for distribution by independent jobbers.

(g) Agreed to prevent and retard the development of wholesale distribution of gasoline throughout the Southern California area by:

1. Controlling the supply of gasoline in the Southern California area;
2. Controlling the retail outlets through which said gasoline is marketed;
3. Fixing and controlling the price at which said gasoline would be sold, if at all, to independent dealers and jobbers selling gasoline in the Southern California area.

(h) Agreed to exclude and prevent plaintiffs from engaging in the business of wholesale distribution of gasoline in the Southern California area by:

1. Forcing plaintiffs out of the market by fixing and controlling the price at which gasoline would be sold, if at all, to plaintiffs;
2. Eliminating the source of supply of refined gasoline to plaintiffs;
3. Eliminating all competition by or from plaintiffs by fixing and controlling the price at which gasoline would be sold, if at all, to plaintiffs.

22. The aforesaid restraints of trade, attempts to monopolize, and monopolization of such trade and commerce, for and on behalf of defendants, have been effectuated by the defendants, and said defendants have accomplished the objects and purposes of their unlawful activities by the following acts:

(a) Controlling the sale and distribution of refined gasoline in the Southern California area;

(b) Denying independent jobbers access to a source of supply of refined gasoline;

(c) Preventing independent jobbers from obtaining refined gasoline from other sources;

(d) Preventing the customers of independent jobbers from obtaining gasoline with which to compete with retail service stations and outlets operated or controlled by defendants;

(e) Maintaining fixed, artificial and non-competitive prices for the wholesale and retail sale of refined gasoline in the Southern California area;

(f) Precluding and destroying any substantial competition afforded defendants in the wholesale and retail selling and marketing of refined gasoline in the Southern California area;

(g) Controlling the sources of refined gasoline in the Southern California area and preventing and precluding independent jobbers from obtaining source and supply.

VII.

EFFECTS OF UNLAWFUL ACTS OF DEFENDANTS UPON PLAINTIFFS AND UPON THE OPERATION OF THEIR BUSINESS

23. The unlawful combination and conspiracy in restraint of trade, combination and conspiracy to monopolize,

acts to monopolize, and the monopolization described above, have as continued by the defendants, and each of them, produced the following unlawful consequences and have had the following injurious effects upon plaintiffs and upon the ability of plaintiffs to engage in the wholesale distribution and sale of refined gasoline:

(a) Defendants have unreasonably and unlawfully fixed and controlled, among themselves, the price at which gasoline would be sold, if at all, to plaintiffs; that as a result thereof plaintiffs suffered a loss of profits which they normally would have enjoyed but for the unlawful conduct of defendants as aforesaid.

(b) Defendants have unreasonably deprived plaintiffs of all available source of refined gasoline, which would enable them to continue their business; that as a result thereof plaintiffs were compelled and forced to cease their business activities with a resultant loss of profits which they normally would have enjoyed but for the unlawful conduct of defendants as aforesaid.

(c) Defendants have unreasonably and without provocation or justification shut off and denied plaintiffs a source of gasoline.

(d) Defendants have unreasonably and unlawfully prevented plaintiffs from carrying on their business activities and as a result thereof the business known as "The Progress Company" became insolvent and unable to meet the demands of its creditors.

(e) Defendants have unreasonably and unlawfully interfered with the business activities of plaintiffs and as a result thereof The Progress Company has been forced to cease doing business, but David Brown and plaintiff Marc D. Leh have nevertheless been required to meet their obligations under the terms of the lease

on the place of business of The Frogress Company, and have been forced to pay substantial rent therefor.

(f) Defendants have unreasonably and unlawfully precluded plaintiff, Marc D. Leh, individually, from entering into or carrying on the business of a wholesale distributor of refined gasoline.

24. That by virtue of the unlawful acts of defendants the said plaintiffs have been damaged in the sum of $245,000 to the date of filing this amended complaint, and that said plaintiffs, under the provisions of Section 7 U.S.C.A., Title 15, are entitled to treble damages therefor in the sum of $735,000; that if the unlawful conduct of defendants persists plaintiffs will be further damaged and will ask leave to amend their complaint to show such further damage and detriment suffered by them.

25. That plaintiffs have been compelled to and have employed attorneys to represent them in this action and have necessarily incurred and will incur for the prosecution of this action not only liability for attorneys' fees but other necessary costs and expenses.

Wherefore, plaintiffs pray judgment as follows:

1. That the acts and things done by defendants be declared illegal and in violation of Sections 1 and 2 of the Sherman Anti-Trust Act (15 U.S.C.A., Sections 1 and 2).

2. For damages in the sum of $735,000, being threefold the damages sustained by plaintiffs.

3. For costs of suit and for reasonable attorneys' fees, pursuant to the laws of the United States, and for such other and further relief as to the Court shall seem just and equitable in the premises.

/s/ Richard G. Harris
(Richard G. Harris)
Attorney for Plaintiffs

Plaintiffs hereby demand a jury trial of the issues involved in this action.

United States District Court for the Southern District of California
Central Division

Civil Action File No. 20531-WM

Marc D. Leh, individually and The Progress Company, a copartnership comprised of Marc D. Leh and David Brown, copartners,

Plaintiffs,

–vs–

General Petroleum Corporation, a corporation, Standard Oil Company of California, a corporation, The Texas Company, a corporation, Richfield Oil Corporation, a corporation, Union Oil Company of California, a corporation, Tidewater Oil Company, a corporation, Olympic Refining Company, a corporation,

Defendants.

PLAINTIFFS' MEMORANDUM OF CONTENTIONS OF FACT AND LAW

INTRODUCTION

The defendants herein, except Olympic Refining Company, are among the principal producers and marketers of gasoline in the Pacific Coast area. They are engaged in all phases of the gasoline business, including the purchase and production of crude oil, the refining of gasoline and other petroleum products and the transportation and marketing of gasoline.

The defendant Standard Oil Company of California sells gasoline at retail through a wholly owned subsidiary, Standard Stations, Inc. This defendant also sells gasoline to service stations which operate as "Chevron" stations. This defendant also operates a "division" known as "Signal Oil Company" and sells its gasoline through stations owned by this division of the company and designated as "Signal" stations.

The defendant General Petroleum Corporation sells gasoline to service stations which operate as "Mobile Gas" stations. The remaining defendants sell gasoline to service stations known respectively as "Texaco", "Richfield", "Union" and "Associated" stations.

Refined products may be handled on a branded or unbranded basis; that is, a supplier may sell the products under his own brand name to the buyer who distributes them under that name, like the service stations just mentioned, or the supplier may sell his products unbranded, in which event the buyer may resell them also on an unbranded basis or may distribute them under his own brand name.

Plaintiff The Progress Company was one of a large class of buyers of unbranded gasoline for resale. In other words, plaintiff was a wholesaler or jobber of rebrand gasoline.

All of the "major" defendants herein (defined to mean defendants herein except Olympic Refining Company) at one time or other sold rebrand gasoline. The gasoline sold was and is equal in quality to that sold by the major defendants to and through their own service stations. However, such gasoline generally sold at retail at prices lower than those charged by the service stations of the major defendants herein.

In about the year 1948 "self service" gasoline stations were introduced on a large scale. The gasoline sold at such

stations was rebrand gasoline obtained for the most part from jobbers such as plaintiff The Progress Company. In fact, plaintiff The Progress Company was then supplying one such self serve station, the Gilmore Station at 7718 Beverly Boulevard, Los Angeles, California.

It is contended that defendants herein combined and conspired to meet the threat of such self serve stations and their suppliers, that such combination and conspiracy was illegal under the Sherman and Clayton Acts, and that plaintiffs were damaged as a result of acts done by the defendants herein pursuant to such combination and conspiracy.

The issues that plaintiff must prove are:

1. The existence of a combination and conspiracy.
2. The illegality of the combination and conspiracy.
3. Whether the combination and conspiracy affects intrastate commerce.
4. Whether the combination and conspiracy caused damage to plaintiffs.
5. The nature and extent of plaintiffs' damage.
6. Attorney's fees and costs.

It should be stated preliminarily that plaintiffs' discovery proceedings are not complete and that interrogatories submitted by plaintiffs and plaintiffs' motion to compel the production of documents under Rule 34 are currently outstanding. This Memorandum of Contentions of Fact and Law is therefore prepared on the basis of facts of which plaintiffs are presently advised. Pre-Trial order Number 6 provides that this Memorandum of Contentions of Fact and Law is "without prejudice to the right of plaintiffs to apply later for leave to suplement or amend said contentions in the light of facts, if any, of which plaintiffs first become advised after September 10, 1959".

I.

THE EXISTENCE OF A COMBINATION AND CONSPIRACY

Reference is made to the amended complaint on file herein for a detailed specification of the charges against defendants. For purposes of this memorandum, but without prejudice to assertion of any of the detailed specifications of the amended complaint, it may be said that plaintiffs contend that defendants combined and conspired broadly to:

1. Boycott self serve stations and other price cutters and their suppliers.

2. Discriminate in price against self serve stations and other price cutters and their suppliers.

3. Gain control of the sale of refined gasoline at the wholesale and retail level, including price control.

4. Monopolize and they have monopolized interstate trade in rebrand gasoline.

Plaintiffs of course do not have to show an express agreement to accomplish the objectives. This was recognized in the case of *United States vs. Paramount Pictures,* 334 U.S. 131, 68 S.Ct. 915, 92 L.Ed. 1260, as follows:

> "It is not necessary to find an express agreement in order to find a conspiracy. It is enough that a concert of action is contemplated and that the defendants conformed to the arrangement."

Similarly in the case of *Interstate Circuit vs. United States,* 306 U.S. 208, 59 S.Ct. 467, 83 L.Ed. 610 the court declared (306 U.S. 227):

> "It is elementary that an unlawful conspiracy may be and often is formed without simultaneous action or agreement on the part of the conspirators . . . Acceptance by competitors, without previous agreement, of an invitation to participate in a plan, the necessary

consequences of which, if carried out, is restraint of interstate commerce, is sufficient to establish an unlawful conspiracy under the Sherman Act."

In *American Tobacco Co. vs. United States,* 328 U.S. 781, 66 S.Ct. 1125, 90 L.Ed. 1575, the court declared (328 U.S. 809-810):

"The essential combination or conspiracy in violation of the Sherman Act may be found in a course of dealings or other circumstances as well as in any exchange of words."

In other words, a combination or conspiracy in restraint of trade may be proved wholly by circumstantial evidence. In *Interstate Circuit v. United States,* 306 U.S. 208, 59 S.Ct. 467, 83 L.Ed. 610, the court declared (306 U.S. 220):

"As is usual in cases of alleged unlawful agreements to restrain commerce, the Government is without the aid of direct testimony that the distributors entered into any agreement with each other to impose the restrictions upon subsequent-run exhibitors. In order to establish agreement it is compelled to rely on inferences drawn from the course of conduct of the alleged conspirators."

This is the "conscious parallelism" doctrine which makes uniform business conduct relevant admissible evidence on the issue of the existance of a combination or conspiracy. Plaintiffs will rely upon the following uniform business conduct to prove combination and conspiracy:

[Here follows a statement of the matters summarized in paragraphs numbered 1 to 18 at pages 19-21 of petitioners' brief.]

In the United States District Court for the Southern District of California, Central Division

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Civil Action No. 11584—C
United States of America, Plaintiff

vs.

Standard Oil Company of California; Shell Oil Company; The Texas Company; Richfield Oil Corporation; General Petroleum Corporation; Tide Water Associated Oil Company; Union Oil Company of California; and The Conservation Committee of California Oil Producers, Defendants.

COMPLAINT

The United States of America, by its attorneys, acting under the direction of the Attorney General of the United States, complains and alleges upon information and belief as follows:

I. Jurisdiction and venue

1. This Complaint is filed and these proceedings are instituted under Section 4 of the Act of Congress of July 2, 1890, c. 647, 26 Stat. 209, as amended, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies," commonly known as the Sherman Act, against the named defendants herein in order to prevent violations by them, individually, jointly, and severally, as hereinafter alleged, of Sections 1 and 2 of the Sherman Act (15 U. S. C. Secs. 1 and 2).

2. The alleged unlawful acts and violations hereinafter described, including the combination and conspiracy to restrain and the combination and conspiracy to monopolize, and the actual monopolization of the interstate trade and commerce, have been, and are, conceived, carried out, and made effective in part within the Southern District of California, Central Division, and many of the unlawful acts done pursuant thereto have been performed by defendants, or some of them, and their respective representatives within said District and Division. All of the defendants transact business within the Southern District of California, Central Division, and are within the jurisdiction of this Court for the purpose of service. The interstate trade and commerce, as described hereinafter, are carried on in part within said District and Division.

II. Definition of terms

3. As used herein the following terms shall have the following meanings:

a. "Pacific States Area" refers to the area comprising the States of California, Oregon, Washington, Nevada, and Arizona.

b. "Independent" refers to any producer, transporter, refiner, or marketer of crude oil and refined petroleum products other than the defendants named herein, in which the defendants have no financial or stock interest, and which does business in any of the States included within the "Pacific Coast Area."

c. "Producer" means any person, association of persons, or corporation engaged in the business of extracting from the earth crude oil from which petroleum products can be manufactured.

d. "Gathering line" means any pipeline used in the transportation of crude oil from any oil well or wells or lease tanks to temporary storage facilities or to trunk lines.

e. "Trunk line" or "trunk pipeline" means any pipeline used for the transportation of crude oil from temporary storage tanks in oil fields to refineries, or tank farms, or marine terminal facilities.

f. "Transporter" means any person, association of persons, or corporations engaged in the business of transporting crude oil and refined petroleum products by pipeline, tank car, tank truck, tanker, barge, or any other means.

g. "Marine terminal facilities" refers to any equipment used or useful in the loading or unloading of crude oil or refined petroleum products from or into any tanker or barge at any coastal or inland water dock, wharf, lighterage platform, including such docks, wharves, and lighterage platforms and their connecting pipelines and pumps, and any storage facilities used or useful in the storage of crude oil or refined petroleum products at such terminal.

h. "Through-put contract" refers to any agreement, understanding, or arrangement between a defendant major and an independent refiner under the terms of which: (1) any part of the petroleum refining facilities or capacity of said independent refiner is used by or in any way managed, operated, or controlled by a defendant major in such a way as to give the defendant major any interest in the refined petroleum products output of such a refinery; or (2) the refining operations of an independent refiner are curtailed or the independent refinery is shut down in consideration of the sale by the defendant major to the independent refiner of all or a part of the independent refiner's requirements of gasoline or other petroleum products; or (3) any crude oil of an independent refiner is refined by a defendant major

for the account of or in the interest of an independent refiner or marketer of petroleum products or in consideration for which the independent refiner receives gasoline or other petroleum products from the defendant major.

i. "Exchange" means the practice of delivering or receiving crude oil or refined petroleum products at a named delivery or receiving point in return for the delivery or receipt of the approximate quantity of equivalent or like product at a different delivery or receiving point.

j. "Refined petroleum products" means products resulting from the refining of crude oil and which are sold commercially, including gasoline, lubricating oils, light fuel oil, diesel oil, and kerosene.

k. "Wholesale distribution point" means any physical or geographical location from which deliveries of refined petroleum products are made to retail dealers and large consumers.

l. "Bulk plant" means the storage tanks and warehouses to which refined petroleum products are moved from refineries and marine terminals and from which such refined petroleum products are transported for delivery to service stations, retail dealers, and consumers.

m. (Deleted.)

n. "Jobber," "distributor," or "wholesaler" means anyone who sells or carries on hand a stock of gasoline and other refined petroleum products for distribution at tank wagon prices to retail dealers, service stations, and others, for resale or for direct consumption.

o. "Tank wagon prices" means the prices at which gasoline, fuel oils, diesel oil, stove oil, and kerosene are sold and delivered to retail dealers and large consumers by tank wagons or tank trucks from bulk plants, refineries or marine or inland terminals.

p. "Tank car prices" means the prices at which gasoline, fuel oils, diesel oil, stove oil, and kerosene are sold to retail dealers and large consumers in railroad tank cars.

q. (Deleted.)

r. "Service station" means a retail outlet selling gasoline and other refined petroleum products to consumers only.

s. "Company service station" means a service station operated or managed directly by one of the defendants herein.

t. "Post" means the practice by which any of the defendant oil companies makes public, by display or otherwise, the prices such company will pay for crude oil and the prices at which such company will sell its gasoline and other refined petroleum products.

III. Description of defendants

4. The following corporations, which are incorporated in and have principal offices in the States and cities listed below, are hereby made defendants herein:

Name of corporation	State of incorporation	Principal place of business
Standard Oil Company of California	Delaware	San Francisco, Calif.
Shell Oil Co.	do	New York, N. Y.
The Texas Co.	do	Do.
Richfield Oil Corporation	do	Los Angeles, Calif.
General Petroleum Corp.	do	Do.
Tide Water Associated Oil Co.	do	New York, N. Y.
Union Oil Company of California	California	Los Angeles, Calif.

5. Each of the defendant oil companies (referred to hereinafter as "defendant majors") is integrated and each engages in the business of producing and purchasing crude oil, in the transportation of crude oil and refined petroleum products, in the refining of crude oil into refined petroleum products, and in the wholesale and retail sale of refined

petroleum products. Each produces and refines crude oil within the State of California and each sells refined petroleum products in each of the five States comprising the Pacific States Area.

6. The total combined assets of the seven defendant majors is approximately $3,857,000,000. Defendant Standard Oil Company of California (referred to hereinafter as "Standard") had combined assets in excess of $1,074,525,000 as of January 1, 1949. Defendant Shell Oil Company Incorporated (referred to hereinafter as "Shell") had combined assets as of January 1, 1949, of $640,568,000. Defendant The Texas Company (referred to hereinafter as "Texas") had combined assets of $1,277,093,000 as of January 1, 1949. Defendant Richfield Oil Corporation (referred to hereinafter as "Richfield") had combined assets of $146,994,000 as of January 1, 1949. Defendant General Petroleum Corporation (referred to hereinafter as "General") had combined assets of $131,663,000 as of January 1, 1947. Defendant Tide Water Associated Oil Company (hereinafter referred to as "Tide Water") had combined assets of $287,730,000 as of January 1, 1949. Defendant Union Oil Company of California (hereinafter referred to as "Union") had combined assets of $298,415,000 as of January 1, 1949.

7. The Conservation Committee of California Oil Producers, a voluntary unincorporated association organized and doing business under and by virtue of the laws of the State of California, with principal office and place of business in Los Angeles, California is hereby named as a defendant herein. Said Committee of California Oil Producers was organized for the purpose of controlling and regulating the production of crude oil within the State of California. Such function is not carried on under the author-

ity of any State Statute of the State of California or of any Federal Statute.

IV. Nature of trade and commerce involved

8. The petroleum industry in the Pacific States Area, comprising the States of California, Oregon, Washington, Nevada, and Arizona, is divided into four branches—production, transportation, refining, and marketing. Each defendant major is integrated in the sense that each engages in all four branches of the industry. Only a relatively few independent oil companies are so integrated. Most of the independent oil companies operate only in one branch of the industry, that is, either in the production, the refining, or the marketing branch.

9. The Pacific States Area is a self-contained, cohesive unit for the production and refining of crude oil and the distribution of gasoline and other petroleum products. Only 2 per cent of the area's crude production is shipped to destinations outside the area, while shipments into the area of outside crude account for less than 1 per cent of the area's total crude demand. Likewise, approximately 98 per cent of the gasoline and other refined petroleum products sold within the area is refined in the area, while approximately 2 per cent is shipped into the area from refineries located elsewhere. Approximately 90 per cent of the gasoline refined within the area is sold within the area, while the remaining 10 per cent is shipped to domestic and foreign destinations located outside the area. There are no pipelines, either crude or product, available for the transportation of crude oil or refined petroleum products between the Pacific States Area and any other area or region.

A. The production of crude oil

10. Crude oil is produced from subsurface deposits known as crude oil reserves. These reserves are found in pools consisting of pockets or reservoirs of oil-bearing rock and sands. Oil pools may be at various geological levels, either above or below other pools in separate geological formations, or they may occur on the same lateral plane with other pools. An oil field consists of one or more oil pools located in close proximity to each other. Oil pools frequently are grouped into an oil field, in part on the basis of the historical development of the oil discoveries, and in part in relation to the existing pattern of the available transportation facilities, particularly pipelines, and the location of crude oil storage facilities. The grouping of pools into fields is important primarily in connection with marketing practices which are conducted on a field basis, particularly with respect to the determination of prices.

11. Crude oil or petroleum is recovered from underground deposits by "producers" from lands which they own in fee, from lands leased by them, or from lands in which they hold some other proprietary interest in the crude petroleum deposits which may be located therein. Oil land holdings range in size from large tracts to single small town lots. The private owners of large oil deposits may either produce the oil themselves or lease the lands to others for operation. Most owners of oil deposits lease their land or oil rights to producers on a royalty basis and sell their share of the oil produced thereon to the producer-lessee.

1. The producing areas

12. All of the crude oil produced in the Pacific States Area is taken from fields located within the State of California. There are no commercially operated crude oil

deposits or reserves in the States of Oregon, Washington, Nevada, or Arizona. The State of California has three producing regions, namely, the San Joaquin Valley, the Los Angeles Basin, and the Coastal Region. The San Joaquin Valley area, containing 86 oil fields and presently producing approximately 50 per cent of the State's total production of crude oil, is located in the southern part of the Great Central Valley of California, principally in Kern, Fresno, and Kings Counties. The Los Angeles Basin, containing 44 oil fields and presently producing approximately 35 per cent of the State's total crude oil production, is located within a radius of 30 miles of Los Angeles Harbor in the southern part of Los Angeles County and an adjoining section of Orange County. The Coastal Region, containing 67 oil fields and presently producing approximately 15 per cent of the State's total crude oil production, extends along the Pacific Coast for more than one hundred miles from the northern part of Los Angeles County through Ventura, Santa Barbara, and San Luis Obispo Counties.

13. In these three areas there are approximately 28,000 producing oil wells located in 197 fields and in approximately 400 pools. As of January 1, 1949, the estimated proved crude oil reserves of these three areas totalled 3,763,583,000 barrels, excluding condensate. In 1948, more than 340,000,000 barrels of oil with a market value of approximately $750,000,000 were produced within the three areas, or approximately 17 per cent of the total crude oil produced in the United States.

14. As of January 1948, there were approximately 950 producers of crude oil in the three producing areas in California. Approximately 50 per cent of the crude oil produced in these three areas is produced by the seven defendant

majors, approximately 2 per cent by integrated independents, and approximately 48 per cent by nonintegrated independents engaged only in the production of crude oil. The crude produced by the defendant majors does not enter the crude oil market since they refine it themselves.

2. Crude oil prices

15. Sellers of crude oil are dependent almost completely upon the existence of expensive highly specialized transportation facilities, chiefly gathering lines and trunk pipelines, for the movement of their product from the wells. Likewise, expensive storage facilities are required for the physical handling of the oil. For these reasons the point of delivery of crude oil is usually very close to the point of sale. Since few independent producers own field gathering lines and storage facilities, and since no independent producers and only a few independent refiners own trunk pipelines running from oil field storage tanks to refining centers, the independent producers are required to sell their crude oil in the field largely to defendant oil companies. The defendant majors purchase approximately 90 per cent of the crude oil produced by the nonintegrated independent producers. These purchases, when added to their own production, provide defendant majors for refining purposes with approximately 94 per cent of the total amount of crude oil produced in the Pacific States Area.

16. Prices for crude oil in the Pacific States Area are not determined by the sellers but by the buyers on the basis of "posted" price quotations publicly offered by defendants Standard, Union, Texas, and General. The posting of such prices is notice by the buyer to all producers that the posting companies are willing to buy crude oil at the posted prices. The posted prices are issued in schedules, showing

prices applicable to various fields and to oil of various degrees of gravity. Defendants Shell, Richfield, and Associated do not post prices but purchase crude oil at the prices referenced by and identical to the prices posted by defendants, Standard, Union, Texas, and General.

17. The four posting companies do not post prices for all of the oil fields in the Pacific States Area. In those fields in which no prices are posted the prices paid for crude oil by defendant oil companies are the prices posted by one or more of the four posting defendant majors for a specified field or fields in the same vicinity. Under this pricing practice the posted price of one or more of the four posting defendants is available, either directly or by reference, to all other purchasers of crude oil, including all seven defendant oil companies, for every oil field in the Pacific States Area and for each and every gravity of crude oil produced.

18. Los Angeles Basin is the principal market for gasoline and other refined petroleum products in the Pacific States Area. Since the oil fields which are contiguous to the Los Angeles refineries are not capable of supplying all of the crude oil requirements of the Los Angeles refineries, additional crude oil must be shipped into Los Angeles from the San Joaquin Valley and Coastal Region. The field price of crude oil at any given location within the Pacific States Area is tied to and based upon the price of comparable crude oil at the Los Angeles Harbor in such a way that the field price of crude in any outlying area plus the cost of transportation to Los Angeles Harbor is equal to the price of comparable oil at the Los Angeles Harbor. The price of crude oil in the entire Pacific States Area, therefore, is determined basically at the Los Angeles Harbor. Field prices of crude oil in areas other than the Los Angeles

Harbor area generally are the prices of comparable crude oil at the Los Angeles Harbor less the transportation rate to the Los Angeles Harbor in bulk quantities by the usual method of transportation.

19. Independent refiners of crude oil, when purchasing their supply must pay at least the posted price of the posting defendant majors. In many instances they are required to pay a bonus or "premium" above the posted price in order to secure adequate supplies because of the dominant position of defendant majors, enhanced by defendant majors' control of the transportation and storage facilities available to such purchasers.

20. On August 1, 1946, crude oil prices were released from the restrictions imposed by wartime governmental controls. From that date until December 1947, the defendant majors increased crude oil prices sharply in a series of steps to approximately double the level existing just prior to removal of governmental wartime controls.

3. Private control of production

21. The State of California has no conservation laws relating to the production of crude oil except those relating to the waste of natural gas occurring in the process of producing crude oil, and to the spacing of wells for drilling purposes. The production of crude oil in California, however, is controlled effectively by a private self-constituted organization of producers called "The Conservation Committee of California Oil Producers." This Committee had its inception in 1930 with the formation by California producers of a so-called "Fact Finding Committee," a voluntary unincorporated association formed for the purpose of obtaining and reporting crude oil production statistics for the industry. The activities of this Committee were enlarged

for the purpose of formulating various programs for imposing quotas upon the volume of oil to be produced; originally, in certain fields or local areas, and later, with reference to statewide production. The present Committee was organized in 1936. In effect, its formation constituted merely a reorganization of predecessor organizations.

22. Defendant, The Conservation Committee of California Oil Producers, was not organized pursuant to any statute of the State of California relating to the conservation of oil and gas. It has no authority in law either to establish or to enforce any system, plan, or program to regulate or restrict the amount of crude oil produced or to be produced within the State of California. Nevertheless said defendant has formulated, developed, and enforced upon the industry a private proration system under which the production of crude oil in California is regulated in every detail.

23. Defendant, Conservation Committee of California Oil Producers, has divided the oil pools or fields in the State into 29 districts. These districts are so defined geographically as to include selected groups of oil fields. Each oil producers has one vote in each district in which he is a producer, regardless of the number of fields in which he is operating or the number of wells from which he may be producing. Each district elects a District Committee. The membership of The Conservation Committee of California Oil Producers is composed of the chairman of each District Committee and three or four members elected at large. This Committee, in turn, selects the membership of the operating subcommittees, including the Administrative Committee and Engineering Board. The Committee also appoints a manager and employs a large staff to assist such manager. The Engineering Board determines the total amount of crude to be produced for each month or for each quarter for the

entire State and for each pool within the State. Such quotas are then considered and approved by the Committee. After approval by the Committee, the Manager of the Committee and his professional staff allocate the production quota established for each pool to each well within such pool. Thereafter detailed schedules of such allotments are sent to each producer within each field. Each producer is required to file with the Manager every ten days a report of his daily production from each well produced. The operations of the Committee are financed by the assessment of approximately one-half mill per barrel of oil produced. These financial details are promulgated and handled by the Administrative Committee.

24. The objective of this private proration scheme has been and is to curtail and control production for the purpose of stabilizing prices of both crude oil and refined petroleum products. During periods of over-production the Committee curtails production to avoid the accumulation of excessive inventories which, in turn, would break the stabilized price structure on gasoline and other refined petroleum products.

25. The private proration system in effect in California is dominated and controlled by defendant majors which produce approximately 50 per cent of the crude oil produced within the State. Under the system of voting established for the election of District Committees, as well as the system under which the membership of the Committee is selected, the defendant majors are able to and do place a substantial number of their representatives on such Committees. In addition, since the defendant majors purchase approximately 90 per cent of the crude oil produced by the independents, set the prices to be paid for such crude oil, and control virtually all transportation and storage facili-

ties necessary to move crude oil from the well to refining centers, they are in a position to and do secure the substantial adherence of most independent producers to whatever production curtailment programs the defendant majors agree to establish.

B. *The transportation of crude oil*

1. The available facilities

26. Crude oil is pumped from producing wells and base tanks within oil pools or fields through so-called "gathering" lines into relatively small field storage tanks located nearby. While in these tanks, water, mud, and other impurities are removed. The oil is then transported from these temporary storage facilities through main trunk pipelines to refineries or to marine terminals for further transportation by marine tankers or barges to refineries.

27. Trunk pipelines are the cheapest and the most expedient of all methods of overland transportation of crude oil from the producing fields to the refineries or to marine terminals. Their construction and maintenance require large expenditures of capital and an assured and continuous supply of crude petroleum for economical operation.

28. As of January 1, 1948, there were approximately 2,434 miles of gathering lines in the Pacific States Area of which defendant majors, either directly or through wholly-owned or controlled subsidiaries, owned 1,863 miles, or 77 per cent. As of the same date there were approximately 3,792 miles of trunk pipelines of which defendant majors, either directly or through wholly owned or controlled subsidiaries, owned 3,661 miles, or 97 per cent.

29. Water transportation enjoys a decided cost advantage over pipeline transportation and is used wherever possible for the longer hauls along the Coast. Most of the

crude moved by water transport is moved initially by pipelines to the marine terminals. Water transport facilities are of two types, to wit: tankers and barges. The tankers are ocean-going vessels which are used principally along the Coast. Barges are used both for ocean transport and on inland waterways. As in the case of pipelines, tankers and barges require a large initial investment and an assured and continuous source of crude oil. On January 1, 1948, defendant majors owned 41 tankers with a total capacity in excess of 4,000,000 barrels, and 21 barges with a total capacity of 146,000 barrels. No independent producer or refiner in the Pacific States Area owns or operates any tankers or barges.

30. Since defendant majors own approximately 97 per cent of the trunk pipelines and 100 per cent of the marine transportation facilities used, the independent refiners can secure crude only from sources located in close proximity to their refineries.

31. Trunk pipelines run from each of the three producing areas in the Pacific States Area to refineries or marine terminals. The San Joaquin Valley is almost completely dependent upon pipeline transportation since no form of water transportation is available, and since mountain barriers and the distances to principal markets are so great as to make truck hauls impractical. Only a small proportion of Valley crude is refined in that area. Each defendant major owns one or more trunk pipelines serving some or all of the fields in that area. Defendants Standard, Shell, and Tide Water own and operate lines running from the San Joaquin Valley north to refineries located at or near Richmond, Martinez, and Avon, respectively, in the San Francisco Bay region. Defendant Tide Water operates a line running northwest to a marine terminal at Mon-

terey. Defendants Texas, Union, and Standard operate lines running southwest to marine terminals on Estero Bay and at Port San Luis. Defendant General operates a line running south to refineries located at San Pedro and Wilmington. Defendant Richfield operates a line running to the Los Angeles Harbor area.

32. Only a small amount of crude oil produced in the Coastal Region is refined there. The producing fields are located in close proximity to marine shipping points. Most of the crude moves to the Coast by pipeline or truck and thence by tanker or barge to refineries located in the Los Angeles or San Francisco Bay areas. Defendant Union operates a trunk line running from Santa Maria Valley fields to Port San Luis, and defendant Shell operates a line running from the Ventura fields south to Wilmington and San Pedro in the Los Angeles Harbor area.

33. In the Los Angeles Basin all of the oil pools are located within a radius of thirty miles of the Los Angeles Harbor. There is a heavy concentration of refineries in the area. Many of these refineries are located adjacent to producing oil fields. Oil moves to the refineries through a network of gathering and short trunk lines which crisscross the area. All of defendant majors operate pipelines in this area. The greater part of the total pipeline mileage owned by independents is located in this area. Due to the short hauls involved in this area, considerable quantities of crude are moved by truck.

2. The exchange of crude oil

34. Oil refiners frequently produce or purchase crude oil at considerable distance from their nearest refinery, tank farm, or transportation facility. A company acquiring such oil usually seeks to exchange it with another firm for

oil of equivalent value at a more convenient location. Such exchanges frequently do not involve an exact equivalent grade of oil delivered by each party. Records are kept and balances are settled periodically. Exchange agreements frequently involve the use of the respective pipeline, storage, and other facilities of the contracting parties.

35. Defendant majors follow the practice of entering into such exchange agreements. The practice has developed to such a degree that approximately 60 per cent of the total production of the Pacific States Area is subject to such exchange agreements. Exchanges of the same oil may be effected several times before such oil is delivered to the ultimate refiner.

36. These exchange agreements necessarily affect the crude oil market structure since they frequently determine a producer's access to a market and a refiner's access to a source of crude oil supply.

3. Absence of effective common carrier status for pipelines

37. (Deleted.)

38. (Deleted.)

39. (Deleted.)

C. *The refining of gasoline and other petroleum products*

40. The manufacturing phase of the oil industry involves the refining of crude oil into gasoline and other petroleum products, including lubricating oils, greases, diesel oil, gas oil, fuel oils, kerosene, etc. Gasoline is the most important product of crude oil. It constitutes approximately 40 per cent by volume and 47 per cent by value of the petroleum products resulting from the refining operation.

41. In relation to its quality as a fuel for automotive propulsion gasoline is rated according to an arbitrary

"octane" scale. The octane rating and scale are based upon the physical molecular structure of the gasoline in relation to its detonating qualities. As the octane rating increases on the scale, the more efficient become the detonating or explosive qualities of the gasoline. This octane quality is also used as a basis for distinguishing between grades of gasoline which carry price differentials. Gasoline referred to in the trade as "housebrand" or "regular" has a lower octane rating and is sold at a lower price than so-called "premium" gasoline which has a higher octane rating. Advances of automotive engineering in the production of high speed, high compression internal combustion engines require that refiners market a gasoline of constantly increasing octane or "antiknock" rating in order that automotive engines may operate at the highest efficiency.

1. The types of refining processes

42. There are three principal types of processes employed in the refining of gasoline and other petroleum products from crude oil. The simplest process is known as distillation which requires the use of heat and pressure. "Skimming" and "topping" are partial crude distillation processes by which gasoline is produced without separating fully the other crude oil fractions. Distillation processes produce from crude oil approximately 25 per cent of gasoline yield by volume. The gasoline so produced is of relatively low octane rating or antiknock quality and usually must be blended or mixed with chemicals to meet modern motor fuel standards.

43. A second and more efficient refining process is known as "cracking." This process effects chemical changes in the crude oil which break down and reform constituent hydrocarbons of higher volatility and market value. This is accomplished by reducing the number of carbon atoms in a

molecule. There are several types of cracking processes, including thermal and catalytic cracking and hydrogenation. Thermal cracking achieves the chemical changes through the use of heat and pressure. Catalytic cracking is more complex and requires the use of a catalyst. Hydrogenation involves catalytic cracking in the presence of free hydrogen under very high pressures. Thermal cracking increases both gasoline yield and quality over the distillation process while catalytic cracking achieves still higher yields and better quality. These two processes produce from crude oil between 40 per cent and 45 per cent of gasoline yield by volume.

44. A third type of refining process employs the relatively new polymerization and alkylation methods, both of which produce gasoline of higher octane or antiknock rating than the cracking processes, as well as higher gasoline yields. These auxiliary processes convert into gasoline and other liquids certain volatile hydrocarbons released by one or more of the other basic refining processes.

45. Defendant majors own and operate refineries which produce gasoline and other petroleum products under all three types of refining processes. They produce approximately 91 per cent of the gasoline refined in the Pacific States Area under the various cracking processes which recover a higher percentage of gasoline than the distillation processes. Because of the large amount of capital investment required to construct refineries using the catalytic cracking processes, as well as the necessity for a continuous supply of crude oil to permit efficient operation under those processes, most of the independent refiners use only the distillation and thermal cracking processes which produce a lower percentage as well as a lower grade and quality of gasoline.

2. The number, location, capacity, and ownership of refineries

46. As of January 1, 1949, there were approximately 64 crude oil refineries located in the Pacific States Area. Their combined crude oil input capacity in service was approximately 1,109,000 barrels per day and 76,700 barrels per day capacity was idle. As of that date facilities for an additional capacity of 21,000 barrels per day were under construction.

47. Four of these 64 refineries are small plants specializing in the production of asphalt and related products from low gravity crude oil. All four of these refineries are owned by independents. Their production of gasoline is negligible. All except one of the remaining 60 refineries are located in California. Of these 60 refineries 43 had an input capacity of approximately 1,021,000 barrels per day as of January 1, 1949. The 17 remaining plants, then idle, had a crude oil input capacity of 76,700 barrels per day. The gasoline refining capacity in the Pacific States Area is about one-sixth of the total gasoline refining capacity in the United States.

48. On January 1, 1949, there were 34 gasoline producing refineries located in the Los Angeles area, 4 in the San Francisco Bay area, 12 in the San Joaquin Valley, 9 in the Coastal Region, and 1 in Spokane, Washington. Defendant majors own or control 20 of these 60 refineries divided as follows: Standard 4, Shell 3, Texas 2, Richfield 2, General 4, Tide Water 2, and Union 3.

49. As of January 1, 1949, all 4 refineries in the San Francisco Bay area were operating; 22 of the 34 were operating in the Los Angeles area; 10 of the 12 located in the San Joaquin Valley were operating; 6 of the 9 located in the Coastal Region were operating; and the one at Spokane was operating. The 34 refineries located in the Los Angeles are represented 57 per cent of the total crude oil

operating capacity in the Pacific States Area and 76 per cent of the shutdown capacity. The 4 refineries located in the San Francisco Bay area represented 32 per cent of the total crude operating capacity. The 12 refineries located in the San Joaquin Valley represented 8 per cent of operating and 10 per cent of shut-down capacity, while the 9 refineries located in the Coastal Region represented 2 per cent of operating and 14 per cent of shut-down capacity. The refinery at Spokane represented less than 1 per cent of operating capacity.

50. Defendant majors own and control approximately 85 per cent of the crude oil refining capacity, approximately 90 percent of the gasoline refining capacity, and approximately 91 per cent of the "cracked" gasoline refining capacity in the Pacific States Area. During 1948, the total gasoline produced by refiners in the Pacific States Area was approximately 120,000,000 barrels of which defendant majors produced and sold approximately 108,000,000 barrels or approximately 90 percent.

D. *The marketing of gasoline and other refined petroleum products*

51. Approximately 50 percent of the gasoline and other refined petroleum products manufactured by refineries located within the State of California is sold in that State. The remaining 50 percent is shipped to the States of Oregon, Washington, Nevada, and Arizona, and to other destinations outside the Pacific States Area. Each defendant major ships substantial quantities of gasoline and other petroleum products from its refineries located in the State of California to wholesale and retail outlets within the States of Oregon, Washington, Nevada, and Arizona. In 1947 the wholesale value of all gasoline, excluding taxes,

shipped from refineries in the Pacific States Area totaled approximately $451,000,000, of which $397,000,000, or 88 percent, was automotive gasoline. The retail value of automotive gasoline sales, excluding taxes, in the Pacific States Area for the same year totaled approximately $700,000,000.

1. Wholesale marketing

52. As used herein, sales at wholesale are sales of gasoline, fuel oils, diesel oil, stove oil, and kerosene to retail dealers and certain large consumers, including governmental agencies and utility, industrial, commercial, and agricultural consumers. Deliveries of products sold at wholesale usually are made by "tank wagons" which are large specially designed trucks or truck and trailer combinations. The basic price for such sales at wholesale is generally called a "tank wagon price." Sometimes deliveries of said products, particularly in the case of fuel oils, are made by tank cars, in which event the prices are called "tank car prices."

53. Most of said petroleum products are distributed from refineries to consumers through wholesale bulk plants and retail dealers, although some of said products are distributed directly to retail dealers and to large consumers from refineries and marine and inland terminals.

54. Where a refinery is located near to a market, the said petroleum products are usually transported by tank wagons from the refinery to bulk plants or directly to retail outlets or large consumers. Where the refinery is located at a distance from a market, shipments of said products are usually made by tankers, barges, pipelines, or railroad tank cars to marine or inland terminal facilities or bulk plants for reshipment and distribution to bulk plants or directly to retail dealers or large consumers.

55. Bulk plants are the principal source of supply to retail dealers in gasoline, fuel oil, diesel oil, stove oil, and kerosene. Bulk plants usually are located at centers of population and trade. They take deliveries from refineries or marine or inland terminal facilities, and maintain large storage facilities. They make deliveries to individual retail dealers and to large consumers within a relatively small adjacent geographical area from tank wagons.

56. Defendant majors own or control most of the bulk plants in the Pacific States Area. Many of these bulk plants are owned by defendant majors and operated by their employees. In addition, defendant majors ship their refined petroleum products to independent distributors who either own bulk plant facilities or lease such facilities from one of defendant majors. Some of these independent distributors purchase the refined petroleum products of defendant majors for resale. Others receive the products on consignment from defendant majors and sell them on a commission basis. Each defendant major requires independent distributors who handle its refined petroleum products to deal exclusively in the refined petroleum products of said defendant major and to refrain from dealing in the petroleum products of independent refiners and marketers. Each defendant major also requires the independent distributors handling its refined petroleum products to sell said products to retail dealers and to large consumers at prices fixed by defendant majors, and otherwise to conduct their businesses in the manner desired by defendant majors. Most of the facilities for the marketing of refined petroleum products at wholesale in the Pacific States Area are therefore foreclosed to independent refiners and marketers, and defendant majors utilize their control of said facilities to effectuate their marketing policies and to maintain the prices at wholesale

which they establish in the areas in which these facilities are located.

57. Each bulk plant has a well defined and recognized geographical area in which it makes sales to retail dealers and large consumers, and a bulk plant handling the products of a defendant major is not permitted to make any sales or deliveries outside of that geographical area. Thus, each bulk plant handling the products of a defendant major has a market area in which it is the exclusive distributor at wholesale of the products of said defendant. However, defendant majors usually retain the right to make sales directly to retail dealers and large consumers located within said geographical areas, so that a bulk plant handling the refined petroleum products of a defendant major does not have any certainty that customers in its territory may not be taken over by said defendant major.

58. Defendant majors sufficiently standardize the various grades, qualities, and components of their gasoline so that it is freely interchangeable among themselves on an exchange basis. A substantial volume of the gasoline marketed in the Pacific States Area is exchanged among them. Such exchanges enable each defendant major to acquire gasoline from other defendant majors at points which are closer to certain of its markets than are its own refining facilities. Defendant majors are thus enabled to penetrate distant markets at transportation costs materially less than said costs would be in the absence of such exchanges. Independent refiners or marketers who are unable to make similar exchanges are largely excluded from markets located at a distance from their refineries because of substantially higher transportation costs than those of defendant majors who make such exchanges.

59. Each of the defendant majors posts tank wagon prices for gasoline, fuel oil, diesel oil, stove oil, and kerosene at each wholesale distribution point at which said products are handled.

2. Retail marketing

60. Except on sales to governmental agencies, industrial, commercial, and large agricultural users, gasoline and motor lubricants are marketed at retail primarily through service stations, and secondarily through dispensing facilities installed in connection with the operation of other businesses, such as garages, automotive repair shops, parking lots, hotels, country general stores, and various other types of business establishments. In 1948 there were approximately 34,000 retail gasoline outlets operating in the Pacific States Area. The defendant majors sell their gasoline and other petroleum products through approximately 29,300 of these retail outlets in the Pacific States Area or approximately 86 per cent of the total number of such outlets. Defendant majors' proportion of the total number of retail outlets varies throughout the Pacific Coast Area, but it is highest in outlying cities and towns which are farthest removed from the refining centers where they can and do take full advantage of their cheaper transportation facilities and make full use of the exchange of products among themselves. Except in the Los Angeles area, defendant oil companies enjoy virtually a complete monopoly of the retail distribution of gasoline and other refined petroleum products in the Pacific States Area. The independent refiners are restricted largely to those local markets situated at or near their refineries, which are located principally in and around Los Angeles Harbor.

61. The defendant majors own and operate approximately 1,173 of the 34,000 retail outlets for petroleum products in the Pacific States Area divided as follows: Standard 1,030, Shell 85, Union 52, Tide Water 4, Richfield 1, and General Petroleum 1. Defendant Texas owns no retail outlets. Defendant majors operate these service stations on an exclusive basis, selling in each station only the refined petroleum products of the defendant major which owns and operates that station.

62. Defendant majors have also obtained and exercised effective control over the operations of the additional approximately 28,127 retail outlets which sell their refined petroleum products to consumers. These retail outlets are operated by independent businessmen who purchase refined petroleum products from defendant majors and resell them to consumers. Many of these independent service station operators lease or sublease their service station properties from defendant majors. All of these operators have entered into supply contracts with the defendant majors. By means of various provisions in these leases, subleases, and supply contracts, and by means of a system of policing which subjects the business operations of these independent service station operators to minute inspection and surveillance, the defendant majors completely dominate and control the manner in which these independent businessmen operate their retail outlets. Each of the defendant majors requires the independent operators who sell its refined petroleum products to purchase their requirements exclusively from the respective defendant major, and not to handle or sell the petroleum products of others. Each of the defendant majors controls the price at which these independent operators resell gasoline and other refined petroleum products. Defendant majors control the hours of operation of the

independent operator's business, the number of his employees, the details of his bookkeeping and accounting procedures and records, the construction, arrangement, and maintenance of his service station, the manner in which he displays and advertises his merchandise, the type, quality, and brands of automotive accessories and miscellaneous merchandise which he handles and sells, and all other details of the conduct of his business affairs. Defendant majors thus dominate and control in excess of 86 per cent of the retail gasoline outlets through which refined petroleum products are sold to consumers in the Pacific States Area, foreclose this substantial part of the retail marketing facilities for refined petroleum products to independent refineries and marketers, and effectuate the policies which they desire in the sale of refined petroleum products at retail.

63. Of the total dollar value of defendant majors' refined petroleum products sold through service stations, approximately 90 per cent is represented by gasoline, approximately 8 per cent by lubricating oils and greases, and approximately 2 per cent by light fuel oils.

64. The retail price of gasoline to the consumer is based on the posted tank wagon price plus a markup or margin for the retailer. The markups applicable to the gasolines sold under the brand names of defendant majors have been standardized and are uniform. Whenever said tank wagon price is changed, the retail price is simultaneously changed in the same amount. By identical and simultaneous changes in posted tank wagon prices, the defendant majors determine, fix, and establish and control retail consumer prices on their brands of gasoline. When defendant majors desire a different retail price than that established as aforesaid, they make special deals affecting the markup of selected retailers in certain marketing locations, including rebates, allowances, and rent adjustments.

E. *Control of the industry*

65. The oil industry in the Pacific States Area is controlled and dominated completely by defendant majors. At the production level defendant majors control approximately 94 per cent of the crude oil produced, either through ownership, lease, or purchase of oil producing lands, or through purchase of crude produced by independents. They control both their own volume of production of crude oil as well as the volume of crude oil produced by independents through control of the policies, practices, and operations of The Conservation Committee of California Oil Producers, which in turn, controls the amount of crude oil to be produced by all producing wells in the Area. There are approximately 950 independent producers of crude oil in the Pacific States Area.

66. At the transportation level, defendant majors own and control approximately 97 per cent of all crude oil trunk lines and approximately 77 per cent of all crude oil gathering lines. They also own and control approximately 100 per cent of the tanker and marine barge facilities used in the transportation of crude oil to refining centers, and approximately 90 per cent of the water transportation facilities, including tankers, barges, and marine terminal facilities, used in the transportation and storage of refined petroleum products.

67. At the refining level, the defendant majors own and control approximately 85 per cent of the crude oil refining capacity and approximately 90 per cent of the gasoline refining capacity.

68. At the marketing level, the defendant majors control approximately 86 per cent of the approximately 34,000 existing retail outlets selling refined petroleum products in the Pacific States Area and sell approximately 90 per cent

of all gasoline sold within the Area. Except for the area within a 30-mile radius of the Los Angeles Harbor, defendant majors enjoy a virtual monopoly in the wholesale and retail sale of gasoline and other refined petroleum products manufactured and sold in the Pacific States Area.

V. *Offenses charged*

69. Beginning in or about the year 1936, and continuing thereafter up to and including the date of the filing of this Complaint, the defendants have been and now are engaged in a combination and conspiracy to restrain unreasonably, and pursuant to said combination and conspiracy have in fact unreasonably restrained the aforesaid trade and commerce, and have combined and conspired to monopolize, and have succeeded in monopolizing such trade and commerce, in the production, transportation, refining, and marketing of crude oil and refined petroleum products in the Pacific States Area, in violation of Sections 1 and 2 of the Act of Congress of July 2, 1890, entitled "An Act to Protect Trade and Commerce Against Unlawful Restraints and Monopolies," as amended (15 U.S.C. Secs. 1 and 2), commonly known as the Sherman Act. Defendants threaten to continue such offenses and will continue them unless the relief hereinafter prayed for in this Complaint is granted.

70. The aforesaid combination and conspiracy unreasonably to restrain trade and commerce, the combination and conspiracy to monopolize, and the actual monopolization, have consisted of a continuing agreement and concert of action among the defendants, the substantial terms of which have been that defendants:

a. Agree to eliminate competition among themselves in the Pacific States Area:

(1) By stabilizing the amount of crude oil to be produced,

(a) Through the organization, in the absence of any statutory authority, of defendant The Conservation Committee of California Oil Producers which establishes monthly and quarterly production quotas for the State of California, for each pool within the State, and for each well within each pool;

(b) Through the domination and control of the policies and practices of the defendant The Conservation Committee of California Oil Producers by the control of its various committees and officers;

(c) Through establishment of production quotas at such levels as will support the prices on crude oil desired by them, as well as the prices desired by them for refined petroleum products;

(2) By fixing and maintaining uniform and non-competitive prices to be paid by them for crude oil purchased from independents,

(a) By causing one or more of them to post, in each oil field, agreed-upon prices for the various grades of crude;

(b) By causing each defendant major to follow the prices posted by the designated defendant major or majors in each of the oil fields in which the defendant majors purchase crude;

(3) By pooling their respective crude oil transportation facilities for the reciprocal use of each of them;

(4) By making reciprocal exchanges of crude oil among themselves so as to permit each of them to acquire crude of any grade and quality in any and all oil fields in the Pacific States Area;

(5) By sharing wholesale and retail markets with each other in the sale of gasoline and other refined petroleum products,

(a) By standardizing the various grades, qualities and structure of gasoline and other refined petroleum products in such manner as to make such products freely interchangeable among themeselves;

(b) By making exchange agreements among themselves which permit each defendant major to penetrate markets not otherwise availab

(c) By selling gasoline and other refined petroleum products at identical prices, thus confining effective competition among themselves to the advertising of brand names and to the offering of free services in their retail outlets;

(6) By fixing and maintaining uniform and noncompetitive prices for the sale of gasoline and other refined petroleum products at wholesale,

(a) By causing one of them to post, at each of its wholesale distribution points, an agreed price for each type and grade of gasoline and other refined petroleum products;

(b) By causing each of the remaining defendant majors to post and charge prices identical to the prices posted by the designated defendant major in the areas in which each sells gasoline and other refined petroleum products;

(7) By fixing and maintaining uniform and noncompetitive resale prices to be charged consumers by retailers handling the gasoline and other refined petroleum products of defendant majors;

(8) By maintaining the wholesale and retail prices agreed upon,

(a) By refusing to sell their gasoline and other refined petroleum products to any wholesale or retail distributor who fails or refuses to follow the prices fixed by them;

(b) By adopting a uniform policy of refusing to sell their gasoline and other refined petroleum products to any wholesale distributor, jobber, or retail dealer who will not agree to sell the products of a single defendant major on a "full-requirements" or "exclusive-dealer" basis, and of refusing to sell to any dealer whose exclusive-dealing and resale-price maintenance contract with any one of the defendant majors has been canceled because of the failure of such dealer to conform to the requirements for exclusive dealing and resale price-maintenance.

b. Agree to utilize their control of the production, transportation, refining, and marketing of crude oil and refined petroleum products to restrict and to eliminate the competition of independent producers, refiners, and marketers in the Pacific States Area:

(1) By limiting the amount of crude oil which independent producers may produce through the private prorate system imposed by defendant majors through The Conservation Committee of California Oil Producers;

(2) By coercing independent producers to adhere to the production quotas established by The Conservation Committee of California Oil Producers,

(a) By refusing to make contracts for the purchase of crude oil from the independent producers except upon condition that the independent producers produce their wells under the prorates established by The Conservation Committee of California Oil Producers;

(b) By refusing to accept crude oil deliveries from independent producers who produce in excess of the quotas fixed by The Conservation Committee of California Oil Producers;

(c) By refusing the independent producers access to defendant majors' pipeline and storage facilities unless the independent producers produce their wells in accordance with the production quotas fixed by The Conservation Committee of California Oil Producers;

(d) By policing the crude oil output of the independent producers for the purpose of assuring themselves that the production quotas allocated to the independent producers by The Conservation Committee of California Oil Producers have been followed;

(3) By discriminating against the vast majority of independent producers, who operate in only one field, by transferring quotas allocated to wells of defendant majors in some fields to wells in other fields, and balancing or offsetting overproduction of quotas by defendant majors in some fields by underproduction of quotas in other fields, thus enabling said defendant majors to overproduce quotas in some fields without overproducing their State-wide quotas.

(4) By refusing the use of their pipeline transportation facilities serving fields distant from refineries, to independent producers and owners of crude oil at said fields, thus requiring said independent producers and owners to sell their crude oil to defendant majors at prices and on terms fixed by said defendants, or to pay transportation costs for said crude oil much higher than the transportation costs of defendant majors for crude oil produced in said fields.

(5) By refusing to make exchanges of crude oil with independent producers and refiners except in instances where such exchanges will enhance market penetration by defendant majors;

(6) By purchasing the capital stock or assets, or both, of independent refiners;

(7) By inducing independent refiners to shut down their productive capacity or to dismantle their refining facilities in return for an agreement to furnish such independent refiners with their full requirements of gasoline and other refined petroleum products;

(8) By acquiring operating and management control of competing independent refineries under various contractual arrangements, including so-called "throughput contracts";

(9) (Deleted.)

(10) By refusing to sell crude oil to independent refiners;

(11) By limiting the supply of crude oil available to independent refiners by restricting the production of crude oil upon which the independent refiners must depend through prorates imposed by The Conservation Committee of California Oil Producers;

(12) By imposing a squeeze upon independent refiners by temporarily raising the price of crude oil while maintaining the existing price of gasoline and other refined petroleum products, thus eliminating the profit margins of the independent refiners;

(13) By refusing to exchange gasoline with independent refiners except in instances where such exchanges will enhance market penetration by defendant majors;

(14) By refusing to independent refiners the use of their pipeline and marine transportation facilities, or by refusing to independent refiners the use of such facilities except upon discriminatory terms and conditions.

(15) By foreclosing independent wholesale and retail markets otherwise available to the independent refiners by requiring independent jobbers, wholesalers, and retailers to handle exclusively the refined petroleum products of defendant majors.

71. During the period of time covered by this Complaint, and for the purpose of forming and effectuating the aforesaid combination and conspiracy to restrain and to monopolize and the actual monopolization of the interstate trade and commerce hereinbefore alleged, the defendants by agreement and concerted action have done the things which, as hereinbefore alleged, they conspired to do.

72. (Stricken.)

73. (Stricken.)

74. The power of the defendant oil companies to control the petroleum industry in the Pacific States Area has increased steadily at all levels of the industry, including the production of crude oil, the transportation of both crude oil and refined petroleum products, the refining of crude oil into gasoline and other petroleum products, and the distribution of gasoline and other petroleum products at both wholesale and retail. Likewise, the power of defendant oil companies to exclude competition at all levels of the industry, including production, transportation, refining, and marketing has increased steadily. Not only do the defendant oil companies possess the power to control and the power to exclude others from the industry but they have demon-

strated an intention to exercise and have in fact exercised such powers to monopolize the petroleum industry in all of its phases in the Pacific States Area and to exclude substantial competition in such area at all levels of the industry, including production, transportation, refining, and marketing. The association of the defendants for the purpose of market control and the elimination of competition has been so closely coordinated with respect to the development of and adherence to policies and practices to achieve these results that these business operations of defendant oil companies are conducted as if said oil companies were a single concern with single management. The defendants' domination and control of the petroleum industry in the Pacific States Area has become so entrenched, and so overwhelmingly and generally accepted, that it has persisted, and will continue to persist and grow independently of particular operating, purchasing, and selling practices, and irrespective of changes therein, and has made and will continue to make it impossible for independents at any and all levels of the petroleum industry to compete effectively with defendant oil companies, or for new capital and new enterprise to enter the petroleum business in any of its branches in the Pacific States Area, unless the relief hereinafter prayed for is granted.

VI. *Effects of conspiracy*

75. The aforesaid agreements and concerted action by the defendants, pursuant to and in futherance of the combination and conspiracy alleged in this Complaint, have had the effects, as intended by the defendants, of unreasonably restraining, of virtually monopolizing, and of completely controlling the production, transportation, refining, and marketing of crude oil and refined petroleum products in the

Pacific States Area; of eliminating all real competition among themselves at all levels of the oil industry; and of controlling completely the competition of independent producers, refiners, and marketers. The defendant majors' quadruple monopoly of the production, transportation, refining, and marketing of crude oil and refined petroleum products has stabilized completely the entire oil industry in the Pacific States Area and has resulted in the elimination of all price competition in the sale to consumers of gasoline and other refined petroleum products.

PRAYER

Wherefore, the Plaintiff prays:

1. That pursuant to Section 5 of the Sherman Act, a summons issue to each of the defendants commanding such defendants to appear and answer the allegations contained in this Complaint and to abide by and perform such orders and decrees as the Court may make in the premises.

2. That the aforesaid combination and conspiracy to restrain unreasonably and to monopolize, and the monopolization of trade and commerce in the Pacific States Area in the production, transportation, refining, and marketing of crude oil and refined petroleum products, be adjudged and decreed to be unlawful, and that the practices alleged in this Complaint be adjudged and decreed to be in violation of Sections 1 and 2 of the Sherman Act.

3. That the Court adjudge and decree that the defendants have combined and conspired to restrain unreasonably, to monopolize, and have actually monopolized the production, transportation, refining, and marketing of crude oil and refined petroleum products in the Pacific States Area in violation of Sections 1 and 2 of the Sherman Act.

4. That each of the defendants and their successors, officers, agents, employees, transferees, and assigns, and all persons acting or claiming to act on behalf of any of said defendants, be perpetually enjoined and restrained from in any way conspiring, contracting, or otherwise acting with others, or singly, to carry out any of the practices alleged in Paragraphs 69 and 70 of this Complaint.

5. That defendant The Conservation Committee of California Oil Producers be forthwith required to terminate its activities and be duly dissolved, and that defendant majors be enjoined from organizing or belonging to any other organization having as its purpose or effect the voluntary or private control of crude oil production in the oil fields, oil pools, and oil wells located or hereafter to be located in the Pacific States Area.

6. That each defendant major be enjoined from posting prices to be paid for crude oil in any field in the Pacific States Area in which said defendant does not actually buy crude oil unless it is making a bona fide offer to buy crude oil; that each defendant major be enjoined from entering into any contract for the purchase of crude oil which specifies that the price to be paid will be a price posted or paid by one or more other specified defendants; and that each defendant major be enjoined from agreeing to follow or adhere to the prices posted or paid by any other defendant major for the purchase of crude oil from any field or pool in the Pacific States Area.

7. That each defendant major be enjoined from discriminating against independent producers or refiners in the making of exchanges of crude oil, by imposing higher charges or more onerous terms on independent producers or refiners who are parties to exchanges than are imposed on defendants, or by giving preferential treatment to an-

other defendant over an independent producer or refiner in the making of exchanges.

8. That each defendant major be enjoined from the execution of any new contract for the purchase of crude oil from any independent producer which extends for a period of more than one year, or from renewing any existing contract for the purchase of crude oil from an independent producer for a period in excess of one year, except upon a satisfactory showing to the Court, with due notice to the Attorney General and an opportunity to be heard thereon, that a purchase contract in excess of one year will not substantially lessen competition or tend to create or continue a monopoly.

9. That all provisions in existing contracts between defendant majors and independent producers which authorize or permit the defendant major to refuse to accept crude oil in excess of any quota or which require the producer to produce no more crude oil than that set forth in a production quota, be declared illegal and void, and that defendants be enjoined from entering into any contract for the purchase of crude oil from any producer containing any provision of this nature.

10. That if any defendant major makes any crude oil trunk pipeline now or hereafter owned or operated by said defendant available for the use of any other defendant, said defendant major shall make said pipeline available for the use of other producers or refiners on equal and nondiscriminatory terms and conditions.

11. That if any defendant major makes available for the use of any other defendant any of its tankers, barges, marine terminals, or facilities, for the storage, transportation, or handling of crude oil or refined petroleum products, said facilities shall be made available to independent producers

or refiners of said products upon equal and nondiscriminatory terms and conditions.

12. That no defendant major be permitted to purchase or acquire the capital stock or assets of any refiner operating in the Pacific States Area except upon a satisfactory showing to the Court, with due notice to the Attorney General and an opportunity to be heard thereon, that such purchase will not substantially lessen competition or tend to create a monopoly in any line of commerce.

13. That each defendant major be enjoined from executing any so-called "through-put" contracts with independent refiners, except upon a satisfactory showing to the Court, with due notice to the Attorney General and an opportunity to be heard thereon, that such contract will not substantially lessen competition or tend to create a monopoly.

14. That each defendant major be enjoined from agreeing to follow or adhere to the prices posted or charged by any other defendant major for the sale of gasoline or other refined petroleum products in the Pacific States Area.

15. That defendant majors be perpetually enjoined and restrained from adopting or following any practice, plan, program, or device which has either the purpose or the effect of stabilizing or fixing noncompetitive prices to be charged by them or by anyone else for the sale and distribution of gasoline and other refined petroleum product in the Pacific States Area, or in any part thereof.

16. That each defendant major be enjoined from discriminating against independent refiners, marketers or distributors in the making of exchanges of gasoline and other refined petroleum products, by imposing higher charges or more onerous terms on independent refiners, marketers or distributors who are parties to exchanges than are imposed

on defendants, or by giving preferential treatment to another defendant over an independent refiner, marketer or distributor in the making of exchanges.

17. That each defendant major and each of its subsidiaries be required to divest itself of all right, title and interest in all service stations or other retail outlets now owned by said defendant or subsidiary; that each of said defendants and its subsidiaries be enjoined from hereafter acquiring any interest in any service station or retail outlet, including the acquisition or renewal of any leasehold interest; that each defendant major and each of its subsidiaries be enjoined from the operation, management or control of any service station and from engaging in the business of selling refined petroleum products at retail either through its own employees or by other persons designated as agents, consignees or managers; that every agreement whereby a defendant major or any of its subsidiaries leases a service station to an operator, and every agreement under which a defendant major or any of its subsidiaries supplies refined petroleum products to a service station operator, shall be in writing and for a term of not less than three years, and that no defendant major or subsidiary may cancel any such lease agreement or supply contract except for a breach of a specified covenant thereof, after written notice specifying the facts constituting said breach.

18. That each defendant major and each of its subsidiaries be enjoined from engaging in the sale and distribution of gasoline or other refined petroleum products at wholesale through agents, commission agents, or consignees, and from renewing or extending any contract or agreement whereby any wholesale distributor or other person is designated or appointed as an agent, commission

agent, or consignee for the sale and distribution of gasoline or other refined petroleum products at wholesale; that each defendant and its subsidiaries be required to convert all existing agency, commission or consignment contracts for the sale and distribution of gasoline or other refined petroleum products at wholesale to contracts whereby said petroleum products are sold to wholesale distributors for resale by them at wholesale; that every agreement whereby a defendant major or any of its subsidiaries leases a bulk plant or facilities for the distribution of gasoline or other refined petroleum products at wholesale to a wholesale distributor, and every agreement whereby a defendant major or any of its subsidiaries supplies gasoline or other refined petroleum products to a wholesale distributor, shall be in writing and for a term of not less than five years; and that no defendant major or any of its subsidiaries may cancel any such agreement except for breach of a specified covenant thereof, after written notice setting forth the facts constituting said breach.

19. That each defendant major and each of its subsidiaries be enjoined from granting to any wholesale distributor of gasoline or other refined petroleum products any exclusive sales territory; or placing any limitations on the territory in which said wholesale distributor may resell any of said products; or from requiring that said wholesale distributor shall resell said products only to purchasers designated or approved by said defendant major or subsidiary, or precluding or preventing sales by said wholesale distributor to designated or specific customers; or from including in any contract with a wholesale distributor any provision whereby said defendant or any of its subsidiaries has an option to purchase or rent, or whereby said wholesale distributor may be required to sell or rent to

said defendant or subsidiary, any of the properties, facilities or equipment of said wholesale distributor for the handling or distribution of gasoline or refined petroleum products, and that any provision of this nature in any existing contract between any defendant major or any of its subsidiaries and any wholesale distributor, including agents, commission agents or consignees, shall be cancelled and declared to be null and void and unenforceable.

20. That defendant majors and each of them and their subsidiaries, and all officers, agents, employees, transferees, or assigns, and all persons acting or claiming to act on behalf of any of said defendants, be enjoined from entering into or using any plan, program, practice, device, contract, agreement, or understanding, including any rebate or other special price concession, which has either as its purpose or effect the establishment, maintenance or control of prices at which gasoline or other refined petroleum products are sold by retail outlets or any other resellers.

21. That each defendant major and its subsidiaries be enjoined from entering into any contract, agreement or understanding with any operator of a service station or other retail outlet for gasoline or other refined petroleum products, or any other reseller of any of said products, which directly or indirectly requires said operator, or other reseller, to obtain all or substantially all of his gasoline or other refined petroleum products from a particular defendant major, or to refrain from handling the gasoline or other refined petroleum products of any other company, or to operate his business during specified hours, or to employ a specified number of employees, or to include specified items or quantities of merchandise in his stock; and that each of said defendants, and subsidiaries, and all officers, agents, employees, transferees, or assigns, and

all persons acting or claiming to act on behalf of any of said defendants, be enjoined from participating in or using any plan, program, practice or device, including contracts, agreements or understandings with operators of service stations or other retail outlets, or other resellers of refined petroleum products, having as its purpose or effect the causing or inducing of said operator or other reseller to deal exclusively in the gasoline or other refined petroleum products of a defendant major through quantity limitations or monetary considerations including but not limited to rebates, bonuses, subsidies, equipment loans, or rental allowances, or reductions in rental charges.

22. That the plaintiff have such other and further relief as the Court may deem just and proper.

23. That the plaintiff recover the costs of this suit.

GEORGE B. HADDOCK,
LAWRENCE W. SOMERVILLE,
WALTER M. LEHMAN,
JOHN H. WATERS,
JOHN M. BODLEY,
Attorneys, United States Department of Justice.

HERBERT BROWNELL, JR.,
Attorney General.

STANLEY N. BARNES,
Assistant Attorney General.

WORTH ROWLEY,
Attorney, Department of Justice.

LAUGHLIN E. WATERS,
United States Attorney.

In the United States District Court, Southern District, of California, Central Division

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Honorable William C. Mathes, Judge Presiding

No. 20531-SM

Marc D. Leh, etc., et al.,
Plaintiffs,

vs.

General Petroleum Corporation, etc., et al.,
Defendants.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Place: Los Angeles, California
Date: Monday, August 21, 1961

[Mr. Harris] • • •

Now, therefore, at this point I think we have an answer to Mr. Painter's assertion that The Progress Company went out of the gasoline business in 1950; and also to point No. 6, that The Progress Company was never forced out of the gasoline business—or, at least, we have this much toward that assertion—that they were in the retail business at least on a 20 per cent participating interest in Gilmore from 1950 to 1952; and from October 16, 1952 forward they had a supply of gasoline of 250,000 gallons a month which was being disposed of, and they were in all senses a sub-distributorship operation of Olympic Refining Company.

The Court: When were they cut off, and how were they cut off?

Mr. Harris: In February 1954, which I will get to subsequently here in my next point, your Honor. I am trying at this point to establish that they were in the gasoline business no later than October 16th of 1952.

Now, the court then asked a question of Mr. Painter—and I have now finished, I believe, with Mr. Painter's discussions of this morning, and we come now to his discussions of this afternoon; his recitation this morning being primarily factual, as I understood, except for the clarifications and additions and filling in that I have done at the present time.

The court asked Mr. Painter the question this afternoon, did the plaintiffs concede that the contract with Progress, or were the arrangements between Progress and Olympic that Olympic would supply so long as they got a supply from General. And the plaintiffs do concede exactly that. That is, that this was the arrangement, that so long as they got a supply from General they would supply Progress, if there was a bonus—

The Court: That is, so long as Olympic received a supply from General Petroleum, Olympic would supply The Progress Company, the partnership?

Mr. Harris: That is right. If there was a bona fide termination of the supply in 1954 from General to Olympic, we would not be here in court. Because it is our position that if there was no conspiracy, and if this contract in 1954 came to an end of its own volition or, as the defendants here contend, that Olympic simply didn't show up any more—and I noticed a certain hurt tone in Mr. Painter's voice like a lover whose sweetheart doesn't call any more, "I was there ready and waiting for him and the light was out and

the door was open and he never came around any more. And I can't understand it, and I am very hurt by it."

If that's what happened, then we'll state right here and now that we don't have a case. But that, plaintiffs submit, is not what happened. The transfer of the account from General to Standard, it's plaintiffs' position, was prearranged, originally discussed between Mr. P. S. Peterson and Mr. Dollar at a meeting at the Bohemian Club in San Francisco; and, contrary to Mr. Painter's assertion at this time that General Petroleum never knew anything about it, it's plaintiffs' contention, and we think we can prove that a gentleman whose presence at the present time is unknown but at the last taking of depositions on this he was somewhere in Arabia working for, I believe, General Petroleum, or perhaps Standard Oil—anyway, he acted as the clearing man for the take-over of this account, and did exactly that. And, furthermore, that the take-over of the account was simply one other act to shift from one supplier to another the distributorship accounts and remove the sub-distributorships along the way.

So that contrary to the defendants' position, or General Petroleum's position that we knew nothing, we don't know what was happening, one day some flunky down on the rack called up—apparently Mr. Minckler got a direct line through and said, "Say, Bob, Olympic isn't down here any more"—which seems rather ridiculous on its face, but their first knowledge of this comes from somebody loading trucks on the rack.

Our position—and, as I say, we think we can prove it—is that this shift was a planned part of getting rid of subdistributorships. And not only that, it was cleared by Standard Oil Company with General Petroleum General Petroleum knew all about it. And it was simply part and

parcel of the conspiracy that we have alleged in our complaint.

The Court: How would there be any damage if General had the right, through whim and caprice, to terminate the supply any time?

Mr. Harris: They had that right, absolutely. If General, acting unilaterally, would have terminated it, we, again, would not be in court. We contend that General, acting unilaterally, did not terminate it; that the defendants combined and conspired to effect that termination.

* * * * * * *

Mr. Harris: Moving now to the next point that Mr. Painter brought up this afternoon, and that was the question of releases, there are two releases to be discussed: One of July 26, 1950, involving General Petroleum Corporation, and the other in 1955 involving Signal Oil & Gas Company.

Now, I'll take the last one first, that is, the Signal Oil & Gas Company first. And I would like also to read to the court the testimony that Mr. Painter read this morning, because, at least to me, it doesn't support his position at all.

The questioning was as follows at pages 896-7 of the Leh deposition.

"Q. By Mr. Painter: And by your statement that it was your opinion that Standard and Signal 'had conspired to prevent our carrying out our OPO contract with F. Supply Company,' you meant that there was a conspiracy between Signal and Standard to prevent you going into the Farm Bureau field?

"A. Yes.

"Mr. Haas: I take it that is Signal Oil & Gas Company?

"The Witness: Yes, Mr. Haas.

"Mr. Mussman: Going back to your question which pertains to that part of the memo where he states that Stand-

ard and Signal had conspired to prevent Olympic Progress Oil Company from carrying out the contract with the Farm Supply Company, my question is this: Is this a different conspiracy than the one that you are alleging in your complaint?

"The Witness: I believe there are several conspiracies. I was referring to Olympic Progress Oil Company, of which I was a part owner, and it has been gone into by a series of questions by Mr. Painter, and it affected me as an individual and affected The Progress Company. So I would say that it was part of the conspiracy, not a different conspiracy."

Now, I quote that because I think that at this point this is another critical issue in the determination of the motions that naturally bring us here, that is, to the discovery motions and the interrogatories.

The defendants in reading their contentions about relevancy of the discovery motions and relevancy of the things we asked for are very express and explicit in stating that we have one small conspiracy here.

In 1948 there was a conspiracy against self-serve stations. This is all. Therefore, we cannot look into any other conspiracies that may have existed, such as with the Conservation Committee to fix the production of crude, or on the Independent Refiners Association. We can't look to those at all because we have a small 1948 conspiracy.

Now, it's our position that the idea of several conspiracies cuts across this whole case. And I earnestly submit to the court that this is something that we're going to have to decide sooner or later in order to pass upon relevancy.

At one point the defendants say we can't get the government work by way of discovery because our conspiracy is 1948 and all of this went on and doesn't have anything to

do with it. But now when it comes up on a question of release, as it does in the OPO situation, they are very apt to say, "Well, this is all one big great happy conspiracy here," and when Leh mentions "conspiracy," even though he talks about several conspiracies, well, he is obviously talking about the big conspiracy going on between us, so this 1955 release releases us all.

The Court: Well, how many do you claim that damage proximately resulted from? More than one?

Mr. Harris: I didn't hear you, your Honor.

The Court: Do you claim that damage to the plaintiff partnership proximately resulted from more than one conspiracy?

Mr. Harris: No, sir, we do not.

The Court: What conspiracy are you relying upon?

Mr. Harris: We rely upon the 1948 conspiracy, but—

The Court: All right. Then that is the only one relevant here to any claim of damage.

Mr. Harris: To claim of damage, yes. But to proof of the conspiracy, no. And that is where I say there is going to be—

The Court: You mean you may offer evidence of other conspiracies to prove the conspiracy relied upon?

Mr. Harris: As part of the proof of the 1948 conspiracy, it is our position that we are entitled to offer industry history and background, as well as direct relevance to the issue of the 1948 conspiracy, the fact that at the same time and at times prior the defendants were in conspiracies on these other things, such as crude supply, such as independent refiners—

The Court: I don't suppose there would be any question but what you can offer evidence that shows that they've done similar acts before and have done similar acts since,

as far as that is concerned, under the circumstances. But what does that have to do with these releases? This release involves only the conspiracy that's relied upon in this case, does it not?

Mr. Harris: No, sir. That's our position. That is what I am trying to get at, and apparently I haven't made that clear to the court.

The Court: You mean it involves other conspiracies besides this?

Mr. Harris: Mr. Leh, in talking about the 1955 situation, is referring to a specific transaction involving Standard Oil Company, an organization known as the California Farm Supply, or Farm Supply Bureau, and Olympic Progress Oil Company.

The Court: Now, which release are you talking about now?

Mr. Harris: I haven't got to the General release.

The Court: The later one.

Mr. Harris: I am talking about the 1955 release at all times until I indicate otherwise to the court.

The Court: But if the release encompasses conspiracies up to date, it would include anything prior to that time, would it not?

Mr. Harris: It would if that was the subject of the release, your Honor.

The Court: Yes.

Mr. Harris: But it is our position that it was not the subject of the release. It is our position that Mr. Leh's testimony here is not at all related to the subject of this action, and the only reason we were going into the OPO-California Farm Bureau transaction, I suppose, is to allow Mr. Painter full and complete discovery. Because it is also our position, and we might as well say it right now,

that Olympic Progress Oil Company has nothing to do with this lawsuit by The Progress Company against these defendants. It's a separate corporate entity.

Mr. Painter wanted to go into the books and records. He wanted to go into testimony on it. We certainly feel that we have afforded him every opportunity for discovery and haven't been at all remiss in letting him look at these things. And I don't think he complained about that to the court.

The Court: Is the partnership a beneficiary of that release?

Mr. Harris: No. The release—

The Court: The release was not given to the partnership.

Mr. Harris: No. The Progress Company—

Mr. Painter: Oh, yes. You are in error. The Signal release inures to the benefit of the individual and the partnership.

Mr. Harris: They are named in it?

Mr. Painter: Oh, yes. And the release moves from them to Signal.

Mr. Harris: I am sorry, your Honor. I understood your question to be was it for the benefit of The Progress Company.

The Court: Well, I meant "benefit" in the sense of obligees. "A party to the release" would probably be more accurate, a more accurate statement.

Mr. Harris: Perhaps it may be appropriate to go into a little bit of the background of the OPO suit.

The Court: Every party named in the release presumably accepts it, I suppose, as something intended for its benefit.

Mr. Harris: The contractual relationship between Signal Oil & Gas Company and Olympic Progress Oil Company was between those two parties only. When the suit was brought, it was brought on the theory of alter ego. Mr. Painter has mentioned that this morning, I believe. And in addition to suing Olympic Progress Oil Company, the additional named defendants were Leh and Brown, and The Progress Company as a named defendant.

Mr. Painter: And Dr. Forbes Farms.

Mr. Harris: And Dr. Forbes Farms is a named defendant in that suit on the theory of alter ego.

So I suppose that in drawing the release these people were put in it since they had been sued. But it is our position, and we very earnestly stated, that The Progress Company had nothing to do with the business of Olympic Progress Oil Company, and the only reason their name appears on that release is because the attorney who prepared the complaint was proceeding, apparently, on an alter ego theory and, therefore, named everybody in sight; and that the release relates to a transaction between Signal and a corporation known as Olympic Progress Oil Company, and does not involve any of the subject matter of this case.

Now, I should also like to point out—I haven't reread the Suckow case. I did when I got the Contentions. But as I recall the Suckow case, it is not the situation that the release in that case was to the defendant. In other words, my recollection of the Suckow case and how it differs from this case is simply that—and I may be wrong in this, but I am almost certain I am correct—that in this case we have a situation where these defendants, who weren't at all parties to that release at all, weren't even named, mentioned, sued, joined, not joined—nothing—are trying to take advantage of a release which was given between other parties.

So to state the facts here, we have a release between Signal and OPO to which Brown, Leh and The Progress Company were also signatories on the alter ego theory.

The Court: They were parties to the release.

Mr. Harris. They were parties to the release, that's right.

These defendants, who were not a party to the release, are now claiming advantage of it.

In the Suckow case, as I recall it, there was a release given to the same people who were made defendants in the later suit, and they came in and said, "You can't sue us. Here is the release that you signed earlier."

So that would be analagous to us now suing Signal Oil & Gas Company, and Signal Oil & Gas Company coming in and saying, "You can't sue us. You have given us a release." They might have more standing to claim the Suckow case than these defendants here. But even the Signal Oil & Gas Company—I don't know about this, but it seems to me that the OPO transaction is completely disassociated from the subject matter of this lawsuit.

The Court: Is the Signal Oil & Gas a co-conspirator here?

Mr. Harris: No, sir. They are not named as a co-conspirator.

The Court: The plaintiffs do not contend that Signal was a party to the conspiracy that is involved here?

Mr. Harris: We contend that we have named the defendants who are parties to the conspiracy, and they are presently before the court.

The Court: They were members of the conspiracy, I I suppose. I don't know. What would be the situation if you release one conspirator?

Mr. Harris: You mean assuming that they were?

The Court: That would be analogous to releasing one tort feasor?

Mr. Harris: Assuming that they were unknown members, to us, of the conspiracy we now talk about, and we release them?

The Court: No, I don't suppose that knowledge and intention would be controlling. If you release one tort feasor, you release all, without knowing that there were others, don't you?

Mr. Harris: I believe that is the general release principle that the defendants are trying to take advantage of. And I don't have any quarrel with that as a general statement of the law.

The Court: You are coming to this other release now?

Mr. Harris: July 1950.

The Court: The earlier release?

Mr. Harris: Yes.

The Court: And that was for the benefit of whom? Who were parties to that?

Mr. Harris: That was directly for the benefit of one of the persons here. That is General Petroleum. So there the proposition, as the court has mentioned it, would hold sway, I suppose.

The Court: I am not suggesting that as any final ruling. I am just raising questions.

Mr. Harris: And I am trying to answer them in the same spirit, your Honor. That is, I am trying to give you my thoughts as I have them on these questions.

The 1950 release, I don't believe, causes any difficulty at all because of the fact that even though it may have released, in the traditional language, all claims from the beginning of the world to the date hereof, it's our position that our

supply of gasoline, at least as a wholesale jobber, came into existence in October of 1952, two years after the release; and that that was cut off at a time in February of 1954 that we have talked about; and upon being cut off in February, our cause of action at that time arose.

The Court: In other words, the claim that is involved here didn't even exist at the time at the time of that release.

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